

TEACHERS AND THE LAW

TEACHERS AND THE LAW

G. R. BARRELL, B.Sc. (Econ.)

*Headmaster, Sir John Cass's Foundation
School in the City of London*

With a Foreword by

THE HONOURABLE
MR JUSTICE VAISEY

D C L

MLSU - CENTRAL LIBRARY



4158EX

LONDON
METHUEN & CO LTD
36 ESSEX STREET WC2

First published 1958

© 1958 G. R. Barrell

CATALOGUE NO 6035/U

Printed in Great Britain by

Butler & Tanner Ltd

Frome and London

CONTENTS

FOREWORD by the Honourable Mr Justice Vaisey, D C L	page 11
ACKNOWLEDGEMENTS	13
INTRODUCTION	15

PART I TEACHERS AND THEIR EMPLOYERS

I <i>The Organization of Education</i>	
1 The Education Acts	21
2 The Minister of Education	21
3 The Ministry of Education	22
4 Local Education Authorities	24
5 Divisional Administration	25
6 Excepted Districts	25
7 Diocesan Education Committees	26
8 Age, Ability and Aptitude	28
9 The Primary Stage	30
10 The Secondary Stage	30
11 All age Schools	32
12 Further Education	33
13 <i>Special Schools</i>	33
14 Independent Schools	34
II <i>The Conduct of Schools</i>	
1 Primary Schools	35
2 Secondary Schools	35
3 All age Schools	35
4 Grouping of Schools	36
5 Instruments of Management or Government	36
6 Rules of Management and Articles of Government	37
7 County and Minor Authorities	38
8 County Schools	39
9 Aided Schools	39
10 Controlled Schools	41
11 Special Agreement Schools	42
III <i>The Status of Teachers</i>	
1 Duties of Local Education Authorities	45
2 Qualified Teachers	46
3 Approved Courses of Training	46

4	Special Approved Qualifications	page 47
5	Special Cases	48
6	Long Service	49
7	Verification of Qualifications	49
8	Probation	49
9	Future Policy	50
10	Special Schools	50
11	Temporary Teachers	51
12	Occasional Teachers	52
13	Health	52
14	Professional Register	52
 <i>IV Conditions of Service</i>		
1	Types of Appointment	54
2	Appointment	54
3	The Agreement	56
4	Married Women	58
5	Reserved Teachers	58
6	Corruption in Office	59
7	Pecuniary Interest	59
8	Membership of Local Authorities	59
9	Religious Opinions	61
10	Accidents to Teaching Staff	61
11	Resignation	63
12	Suspension of Teachers	63
13	Dismissal	63
14	Withdrawal of Recognition	65
 <i>V Salaries and Income Tax</i>		
1	The Salary Committees	67
2	Duration of the Scales	68
3	Primary and Secondary Schools	68
4	Special Schools and Classes	73
5	Other Educational Establishments	74
6	Income Tax	74
 <i>VI Leave of Absence</i>		
1	Sickness	76
2	Sick Pay Regulations	76
3	Infectious Illness	77
4	Accidents during Teaching Duty	77
5	Accidents outside Teaching Duty	77
6	Tuberculosis	78
7	Confinement	78
8	Holidays	78

9. Suspension of Sick Pay	page 79
10. Deductions from Sick Pay	79
11. Saturdays and Sundays	80
12. Declaration as to National Insurance Entitlement	80
13. Claims for National Insurance Sickness and Injury Benefit	82
14. Married Women	82
15. First Appointments	83
16. Leave for Reasons other than Personal Illness	83

VII *Superannuation*

1. Contributions	86
2. Pensionable Service	86
3. Supplementary Service	87
4. Overseas Service	87
5. Service of Exceptional Value	88
6. War Service	88
7. Absence on Sick Leave	89
8. Re-employment after Retirement	89
9. Application for Pension	89
10. Qualification for Allowances	89
11. The Annual Allowance (Pension)	90
12. The Additional Allowance (Lump Sum)	91
13. Allocation of Part of Pension	91
14. Breakdown Allowance	91
15. Death Gratuity	92
16. Note on Will	92
17. Annuities	92
18. Widows, Widowers, Orphans or Other Dependants	93
19. Return of Contributions	93
20. Effect of Dismissal	93
21. National Insurance	93
22. The Pensions (Increase) Acts	94

PART II: TEACHERS AND THEIR EMPLOYMENT

VIII *Routine Administration*

1. Obligatory Records	99
2. Admission of Pupils	100
3. Removal from Roll	101
4. Suspension and Expulsion of Pupils	103
5. Infectious Illness	104
6. Records of Individual Development	105
7. Transfers	106
8. Educational Year and Holidays	106
9. School Sessions	106

10	Time Table	page 107
11	Size of Classes	107
12	Temporary Closure of Schools	108
13	School Annals	108
14	Corporal Punishment	109
15	External Examinations	109
16	Handicapped Children	109
17	Special Schools	110
18	Employment of Children	112
IX	<i>School Attendance</i>	
1	Compulsory School Age	116
2	Attainment of Age	116
3	Avoidance of Broken Terms	117
4	Presumption of Age	117
5	Duties of Parents	118
6	Attendance Registers	119
7	Leave of Absence	121
8	Enforcement of School Attendance	121
9	School Attendance Orders	123
10	Further Education	124
11	Documents receivable in Evidence	125
12	Premature Leavers	125
X	<i>Religious Education</i>	
1	Freedom of Conscience	127
2	History	128
3	The 1944 Act	129
4	The Daily Act of Worship	129
5	The Agreed Syllabus	130
6	Voluntary Schools	131
7	Inspection	132
8	Time Table	133
9	Withdrawal from Religious Instruction	133
10	Days of Obligation	134
11	The Jewish Sabbath	135
12	Staffing	135
13	Visits of Clergy to Schools	136
14	Boarders	136
15	Special Schools	137
XI	<i>Accidents and Negligence</i>	
1	The Duty of a Schoolmaster	138
2	Negligence	139
3	Contributory Negligence	141
4	Higher Duty of Care	142

5	Scope of Employment	page 142
6	General and Approved Practice	143
7	The Effect of Age	145
8	Warning of Danger	145
9	Science Laboratories	146
10	Physical Education	146
11	The Straying Child	147
12	Criminal Negligence	148
13	Accidents away from School	149
14	Commencement of Proceedings	150
15	When an Accident Occurs	150
16	Accidents to Visitors	152
17	<i>In loco Parentis</i>	152

XII *Punishment*

1	The Teacher's Authority	155
2	The Canons of Punishment	156
3	Local Education Authority Regulations	156
4	Unreasonable Punishment	158
5	Authority out of School	158
6	Detention	161
7	Corporal Punishment	161
8	Punishment by Prefects	163
9	Suspension and Expulsion	164

XIII *Children in Trouble*

1	The Juvenile Courts	165
2	Offences by Juveniles	166
3	Cases where a Juvenile has not committed an Offence	167
4	Reports	168
5	Orders of the Court (Offences)	168
6	Orders of the Court (Care or Protection, etc.)	172

XIV *Extraneous Duties*

1	General	174
2	Dinner Duty	174
3	Playground Duty	176
4	Road Crossing	176
5	Other Voluntary Duties	176
6	Games	177
7	Uniformed Youth Organizations	178
8	Bathing and Boating	178
9	Insurance	178
10	School Journeys	179
11	The Law of Waterways	179
12	Transport	180

13 Letters of Indemnity

181

14 Dereliction of Duty

xv *Concerts and Plays*

1 Licensing of Hall 183

2 Royalties on Stage Plays 184

3 The Performing Right Society 185

4 Gramophone Records 185

5 Broadcast Music 186

6 Private Performances 186

7 Infringement of Copyright 186

8 Original Plays 187

9 Performances by Children 188

10 Entertainments Duty 188

xvi *In Confidence*

1 General 189

2 Libel and Slander 189

3 Privilege 192

4 Teachers and Defamation 193

5 Testimonials 194

6 References 197

7 School Terminal Reports 199

8 Reports on Teachers 199

9 Addresses of Staff and Pupils 200

10 Press, Radio and Television 200

xvii *Miscellaneous*

1 Official Visitors 202

2 Other Visitors 203

3 Complaints by Neighbours 204

4 Homework 204

5 Loss of Property 205

6 School Rules 205

7 Parent-Teacher Associations 206

8 Lotteries and Money raising Activities 206

9 Police Investigations 207

10 Radio Licences 207

11 Tuck Shop 208

12 School Crests 208

13 School Magazines 209

14 The Law of Copyright 209

APPENDIX I—*Addresses of Professional Associations* 213APPENDIX II—*Bibliography* 217INDEX *after D* 223

FOREWORD

BY THE HONOURABLE MR JUSTICE VAISEY, D C L

This book covers a very wide field. Its author is well qualified, both by knowledge and by experience, to deal in a practical way with the many problems which arise in that field, and to get together a great deal of information not readily obtainable elsewhere. The work should prove both interesting and useful, not only to members of the great teaching profession, but to many others who would like to know more about its subject. To all such persons I would commend it. For whether Education is regarded as an art or as a science (and of course it is both), it is admittedly of the highest importance, and here is much valuable material for a better appreciation and understanding of what it means.

H B VAISEY

Royal Courts of Justice

ACKNOWLEDGEMENTS

I am indebted to Mr Justice Vaisey, not only for contributing the Foreword to this book, but also for his characteristic interest and kindly encouragement. The whole book has been read in manuscript by Mr Hugh Leslie Watkinson, M A , B Sc , formerly Headmaster of Mexborough Grammar School and for many years a member of the Legal Committee of the Incorporated Association of Headmasters, by Captain G Howard Walker, M C , M.A , LL B , of Barnsley, and by Mr A J C Gooding, of Ealing, all of whom have made a number of most helpful comments. Mr Gooding has also assisted me with the reading of the proofs. The chapter on the juvenile courts was read by Mr A Wallieb-Clifford, of the London Probation Service, and advice on the subject of armorial bearings was given by Chester Herald of Arms. Dr F A Cockin, the Bishop of Bristol, has kindly given me permission to quote his definition of the aim of religious education. Last, but by no means least, I must mention the debt which I owe to the knowledge and experience of the staff of Messrs Methuen and Co , not only in the field of publishing, but also of education.

Quotations from, and references to, material in which Crown copyright subsists have been made with the permission of the Controller of Her Majesty's Stationery Office.

I am most grateful to all those who, by their advice and help, have enabled me to remove many imperfections from this book, for any which remain I, alone, am responsible.

As I am the Headmaster of a school which is aided by the London County Council, it is necessary to state that the Council is in no way responsible for any opinions or conclusions contained in this book.

G R B

3 March 1958

INTRODUCTION

This book is intended to help the teacher through some of the many legal pitfalls which beset his path today. It is hoped, also, that it may be of some use to the student in training so that he may be both forewarned and forearmed. Whilst much of the subject matter is primarily the concern of heads, a great deal more is part and parcel of the everyday life of the assistant teacher.

The first part of the book is devoted to a simple outline of the English educational system as established by law. Teachers often have hazy ideas about those parts of the national system of education with which they are not in close contact, and of their own place, rights and responsibilities within it. A teacher's employment is subject to the terms of his contract and this, in turn, depends upon statutes and a host of regulations made under the authority of those laws. Whilst it is hardly possible to commend Statutory Instruments as soothing bedside reading, it is highly desirable that teachers should understand the conditions upon which they are employed.

A teacher is *in loco parentis* and, whilst a child is in his care, some of the privileges of the natural parent are transferred to him in order that he may carry out his duties. In return, the teacher must assume certain responsibilities and must recognize that these obligations, partly legal and partly moral, rest upon him in every aspect of his work. The second part of the book deals with the way in which some of these matters affect the teacher in his professional capacity.

The law requires that, since the teacher is *in loco parentis*, he should, quite naturally, take such care of his pupils as a prudent father would take. It does not demand more, it will not be satisfied with less. Most of us would agree that caring for other people's children is morally a greater burden than looking after

our own. The law does not take this view, but it does expect that we should take the same care.

Many of the problems covered in this book are illustrated by actual cases which have been before the courts. It should be remembered that the law, as promulgated in Acts of Parliament, is stated in very general terms for it would be quite impossible to frame a statute which would meet every conceivable set of circumstances—and some circumstances are almost inconceivable. It is the duty of the courts to apply the test of statute law to the facts of a particular case and the decisions thus made, provided they have not been appealed against successfully, become case law and may be quoted as precedents in similar proceedings.

It would be foolish to pretend that the aim of this book is to make every teacher his own lawyer. No two cases are exactly alike in their circumstances, and the differences are often so subtle that only a trained legal mind can recognize them. It is intended as a general guide to help teachers to unravel some of the simpler problems, and to warn them of the existence of some of the graver dangers. Most teachers manage to pass from college to retirement without being personally concerned in any major legal problems, others are not so fortunate, and may become involved in wrangling over the tenure of their appointment or a complaint by a contentious parent which has arisen through no fault of their own. If serious trouble threatens, a wise teacher will take two precautions.

First, he should immediately inform his superior and discuss the matter fully and frankly with him. For assistants this means the head, a head will go to the chairman of his governors or managers and, if he deems it wise, to the local education authority. If legal action is probable, a superior officer has a right to be forewarned. Moreover, such action is in the teacher's own interest since he is much less likely to receive sympathetic treatment when concealed trouble bursts like a bolt from the blue, or when the passage of time has seriously restricted the help which can be given to him. It is useless and unwise for an assistant teacher to try to persuade a complaining parent to drop a matter he is threatening to report. If the teacher has acted

reasonably, he has little to fear from an investigation, if, on the other hand, the parent suspects that he fears any probing into his work, it is highly probable that the same complaint, or another, will be raised at a later date. Almost inevitably the teacher's earlier attempt to hush things up will then be revealed, with disastrous effects on his professional reputation.

The second precaution is to report the whole affair to his professional association. Some teachers will say that they are not 'union minded' and that they prefer not to join such an organization. Quite apart from the fact that many of the privileges of the profession are due to the activities of the associations, there are many practical advantages to be gained from membership, and not the least of these is the provision of legal advice to members faced with litigation. When an important issue is at stake the associations will spare no time, trouble or money to safeguard their members' interests. The case of *Lewis v Carmarthenshire County Council*¹ is an outstanding example. This book is not intended as a substitute for service of this kind, the teacher faced with a lawsuit should consult his association at once and, having received advice, he should follow it. Only the association's solicitor, in possession of all the facts of the case and with records of many more relevant cases than could be included in a book of this scope, can weigh the various factors and advise the member how best he can act in his own interests.

This is not intended to be a standard work on the law of education so much as a hand book of professional advice on points at which the law touches teachers. Therefore, where it has seemed worthwhile to do so, the opportunity has been taken of including some material which is purely professional in character, but which has a bearing on the main theme.

Finally, for the benefit of the ladies, I should add that Section 1 (2) of the Interpretation Act, 1889, applies to this book, with the effect that, 'unless the contrary intention appears, words importing the masculine gender shall include females'.

¹ See page 147

Part One

TEACHERS AND THEIR
EMPLOYERS

I

THE ORGANIZATION OF EDUCATION

1 The Education Acts

The organization of the public system of Education in England and Wales is laid down in detail in the Education Act, 1944, commonly called the 'Butler' Act after Mr R. A. Butler who, as President of the Board of Education, piloted it through Parliament and subsequently became the first Minister of Education.

The Act of 1944 is cited as the principal Act. It has, however, been amended by the Education Act, 1946, and the Education (Miscellaneous Provisions) Acts of 1948 and 1953. These later statutes were designed to tidy up various matters, and to make amendments in the light of experience of the working of the principal Act. The four statutes are quoted together as the Education Acts, 1944 to 1953.

2 The Minister of Education

The 1944 Act provides that there shall be a Minister of Education 'to promote the education of the people of England and Wales and the progressive development of institutions devoted to that purpose, and to secure the effective execution by local authorities, under his control and direction, of the national policy for providing a varied and comprehensive educational service in every area'.¹

The Minister has replaced the former President of the Board of Education and has taken over all the functions formerly exercised by him. The change is more than a mere alteration of

¹ Education Act, 1944, s. 1 (1)

name, for the new office is one of full ministerial rank and is an indication of the increasing importance attached to education by Parliament.

The Minister is a member of the government of the day and is answerable to Parliament for the actions of his department.¹ He may appoint a Parliamentary Secretary, who is also a member of the government.²

3 The Ministry of Education

The Ministry comprises a large permanent staff under the control of the Minister, and is responsible for carrying on the day to day routine of the latter's functions as laid down in the Act, in accordance with the wishes of Parliament. It correlates the work of the various education authorities and examines their schemes involving capital expenditure. Regulations made by the Minister in accordance with the powers given to him under the Act are prepared, in the first instance, by the permanent staff.

All teachers in schools within the statutory system of education must be recognized by the Ministry, which is the custodian of their professional records. The principal document is the Teacher's Service Book in which are entered the qualifications of the teacher, details of service from year to year and matters concerning salary and superannuation. The Service Book is held by the local authority employing the teacher, but it is sent back to the Ministry from time to time for examination, and also on each change of employment involving a change of authority. It is possible for teachers to purchase a copy of the book for a small charge. Such copies, made up to date, are obtainable directly from the Ministry.

The Act provides that the Minister shall 'cause inspections to be made of every educational establishment at such intervals as appear to him to be appropriate, and to cause a special inspection of any such establishment to be made whenever he considers such an inspection to be desirable'.³ For this purpose the Minister recommends to the Crown the appointment of inspectors whose

¹ Education Act, 1944, s. 5

² Education Act, 1944, s. 77

³ Education Act, 1944, s. 1 (3)

duties are to visit the schools in order to consider whether they are complying with the grant regulations, and to report upon their general efficiency.

Her Majesty's Inspectors (commonly known as HMIs) deal with a wide range of subjects including not only the actual teaching work of the school but also the state of the buildings and the provision of facilities generally. They may not inspect Religious Education of a denominational character in voluntary schools. They make periodic routine visits to the schools under their care and also, from time to time, carry out full inspections when the whole work of the establishment is subjected to a careful scrutiny. Such inspections are not purely inquisitorial in character, but also serve to facilitate the exchange of new ideas and methods between the schools. The report of a full inspection is printed and presented to the Minister, and also to those responsible for the management of the establishment.

Under the same section of the Act, it is an offence to obstruct any person authorized to make an inspection, the penalty being a fine not exceeding twenty pounds for the first offence or, for subsequent offences, a fine not exceeding fifty pounds with or without a maximum of three months' imprisonment.

The Act also set up two Advisory Councils, one for England, the other for Wales and Monmouthshire.¹ The function of these bodies is 'to advise on educational theory and practice as they think fit and on any questions referred to them' by the Minister. Members of the Councils are appointed by the Minister and must include persons with educational experience outside the statutory system. They replace the former Consultative Committee which issued such far-reaching documents as the *Hadow Report on The Education of the Adolescent*² and the *Spens Report on Secondary Education*.³ Unlike the Consultative Committee, the new Councils may investigate subjects which they have chosen for themselves, in addition to dealing with those referred to them by the Minister.

¹ Education Act, 1944, s. 4

² H M S O (1926)

³ H M S O (1938)

4 Local Education Authorities

The actual provision and administration of education is in the hands of local education authorities.¹ These are the education committees appointed by the councils of counties and county boroughs under Part II of the First Schedule to the Act. Such authorities are required to provide an adequate number of school places, a sufficient supply of teachers in the various categories and the books and equipment needed for their work. Their duties are bound upon them by the Act.²

In addition, local education authorities provide a wide range of ancillary services ranging from school meals and medical facilities to libraries, grants for further education, and the service of youth. They must make provision for the education of physically and mentally handicapped children and for those who are deprived of a normal home environment, or who are maladjusted or delinquent. They may appoint their own inspectorate to supplement the work of Her Majesty's Inspectors.³ The penalties for obstructing these officers are the same as in the case of HMIs.

Part I of the First Schedule to the 1944 Act authorizes the setting up of a Joint Education Board to cover the areas of two or more authorities where it appears that such a board would make for greater efficiency, or would work more economically, than separate authorities. Such a board is, for all the purposes of the Acts, the local education authority for the areas concerned. The city and soke of Peterborough have been combined in this way.⁴

Some local education authorities maintain colleges for the training of teachers. Entry to such colleges is not restricted to those living in the authority's area, neither are those trained in them necessarily employed later in the service of that authority.

One of the duties of a local education authority is the appointment of a Chief Education Officer.⁵ This official is responsible for

¹ Education Act, 1944, s. 6 (1) and (2).

² Education Act, 1944, ss. 8 and 41.

³ Education Act, 1944, s. 77 (3) and (4).

⁴ In all, there are 146 local education authorities in England and Wales, of which 62 are counties, 83 are county boroughs and one is a joint board.

⁵ Education Act, 1944, s. 88.

the administration of the authority's education service under the direction of the committee. The names of candidates whom the authority propose to interview for this appointment must be submitted to the Minister, with a statement of their qualifications and experience. The Minister may prohibit the appointment of any candidate who is, in his opinion, unsuitable.

Local education authorities may make such rules as they consider necessary for the good conduct of their schools and the guidance of those who work in them. These regulations must not conflict with the provisions of the Acts, nor with any rules made by the Minister under the Acts.

The revenue necessary for meeting an authority's liabilities is derived partly from local rates levied by the finance committee of the council for the area concerned, and partly from government grants.

5 Divisional Administration

County (but not county borough) authorities were required by the 1944 Act to submit to the Minister a scheme for dividing their areas into smaller units, and for appointing local committees to administer these units under the oversight of the authority.¹ The Minister had power to exempt an authority from this requirement if he was satisfied that such a scheme was unnecessary. Each of these smaller areas is known as a Division and is under the control of a Divisional Education Officer. Authorities could apply to the Minister for some modification of the general pattern to suit local needs. As a result, the exact form varies somewhat from county to county, and a detailed description is not possible, but the general effect is that some of the functions of the local education authority are delegated to the divisions within the framework of the authority's scheme.

6 Excepted Districts

Boroughs or urban districts which had, immediately before the war, either a total population of sixty thousand, or seven thousand

¹ Education Act, 1944, Schedule I, Part III

elementary school children, were permitted to prepare their own schemes of divisional administration for primary and secondary education. In certain cases, smaller authorities were permitted to apply for this right on showing special circumstances.¹ Thirty-eight of the forty-seven eligible authorities, and seven special claimants, were recognized by the Minister, and are known as Excepted Districts. The borough or urban district council is the divisional education executive committee for the area.

7 Diocesan Education Committees

Voluntary schools are provided, so far as the buildings are concerned, by various bodies. In the case of Church of England schools, however, the close relationship between Church and State has involved the creation of Diocesan Education Committees by a Measure of the Church Assembly which gives them a statutory existence.² This Measure provided for the creation of such committees in every diocese except that of Sodor and Man.

The majority of Church schools were once parochial in character and were provided out of funds raised in the parish. Before the war, many of these buildings had long ceased to conform to modern standards and the cost of putting them in order was far beyond the means of the ordinary parish.

Moreover, in large cities the shift of population and the development of local authorities' housing schemes meant that some Church schools were no longer required, whereas neighbouring parishes badly needed new schools. So long as the trusts were on a parochial basis, it was almost impossible to close down a school in one place and apply its funds elsewhere.

The diocesan education committees can redeploy the educational resources of a whole diocese in accordance with an overall plan. This enables the most urgent modernizations to be carried out, and many new schools have been built which would not have been possible before the creation of the committees.

¹ Education Act, 1944 Schedule I, Part III 4-5

² Diocesan Education Committees Measure, 1943 (amended, 1951)

The functions of the diocesan education committees are laid down as follows ¹

1 to take such steps as may appear to the Committee to be conducive to the promotion of religious education according to the faith and practice of the Church of England, and to watch the interests of Church schools,

2 to take such action as may appear desirable to provide new schools,

3 to promote, and to co-operate with other religious bodies and with local education authorities in promoting religious education within the diocese,

4 to give advice, as and when the Committee thinks fit, to trustees or owners of Church schools, and others, as to any matter affecting Church schools within the diocese, *and also to the governing bodies of Church educational endowments as to any matter affecting Church educational endowments within the diocese,*²

5 to make plans calculated, in the opinion of the Committee, to further the development and organization of religious education in the diocese, and in particular of instruction in religious education according to the faith and practice of the Church of England, after consultation with such trustees or owners and managers of Church schools within the diocese and with such other persons as, in the opinion of the Committee, are interested or as may be in any way affected thereby

Trustees or owners and managers of Church schools are required to consult the diocesan committee before concluding any agreement dealing with the restoration, rearrangement, continuance, discontinuance, closing, sale or lease of any Church school

The constitution of the committees is laid down in a schedule to the Measure

Providing bodies other than the Church of England have their

¹ Diocesan Education Committees Measure, 1943 s. 2 (1), as amended by the Diocesan Education Committees Measure 1943 (Amendment) Measure, 1951, s. 2

² The words in italics were added by the amending Measure of 1951

own arrangements which are determined by the varying structures of the bodies concerned.

8 Age, Ability and Aptitude

The 1944 Act states that 'the schools available for an area shall not be deemed to be sufficient unless they are sufficient in number, character and equipment to afford for all pupils such variety of instruction and training as may be desirable in view of their differing ages, abilities and aptitudes' ¹ In addition, 'the Minister and local education authorities shall have regard to the principle that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents' ²

The organization of schools to meet these needs is laid down as follows 'The statutory system of public education shall be organized in three successive stages to be known as primary education, secondary education and further education' ³

The primary stage of education covers nursery schools or classes, infants' schools and junior schools. It is defined as 'full-time education suitable to the requirements of junior pupils who have not attained the age of ten years and six months, and full-time education suitable to the requirements of junior pupils who have attained that age and whom it is expedient to educate together with junior pupils who have not attained that age'.⁴ A junior pupil is a child who has not attained the age of twelve years ⁵

At the secondary stage there are grammar, technical and modern schools. Secondary education is 'full-time education suitable to the requirements of senior pupils, other than such full-time education as may be provided for senior pupils in pursuance of a scheme made under the provisions of this Act relating to further education, and full-time education suitable to the requirements of junior pupils who have attained the age of ten years and

¹ Education Act, 1944, s. 8 (1)

² Education Act, 1944, s. 76. See also page 29

³ Education Act, 1944, s. 7

⁴ Education (Miscellaneous Provisions) Act, 1948, s. 3 (2)

⁵ Education Act, 1944, s. 114 (1)

six months and whom it is expedient to educate together with senior pupils' ¹ A senior pupil is a person who has attained the age of twelve years, but has not attained the age of nineteen years ²

Further education comprises all vocational and non-vocational education provided for young people after they have left school, and for adults. Until 1944, this field was not among those where authorities were bound to act, all had some system of further education, and provision of this type is now compulsory. Vocational education is covered by technical, commercial and art courses, many non-vocational courses are arranged,³ county colleges will eventually be established and the service of youth provides a wide range of recreational facilities.

The right of a parent under Section 76 of the 1944 Act to choose a particular school for his children was the subject of a lawsuit in 1955.⁴ The Watt twins passed the eleven plus examination and, as there was no grammar school in their part of the county, the local education authority offered to pay their fees at Stamford School, an independent Church of England foundation. The boys were Roman Catholics and the father sent them to Roman Catholic schools in Monmouthshire and Northamptonshire, demanding from the Council payment of the full fees. He based this claim on the authority's duty to educate children in accordance with the wishes of their parents as laid down in Section 76. The Court of Appeal upheld the decision of Mr Justice Ormerod that the Council had not failed to comply with this section by refusing to pay. Section 76 did not give a parent the right to choose his children's school at the public expense, subject to two conditions, it only laid down a general principle. In this particular case the public expenditure would have been unreasonable. Leave was given to appeal to the House of Lords, but the parent dropped the case at this point.

¹ Education Act, 1944, s. 8 (1) (b) and Education (Miscellaneous Provisions) Act 1948, s. 3 (3)

² Education Act, 1944 s. 114 (1)

³ Some idea of the remarkable variety of the non vocational courses can be gained from a study of *Floodlight*, the annual prospectus of courses published by the London County Council.

⁴ *Watt v Kesteven County Council* (1955) 1 All E.R. 473

9 The Primary Stage

Nursery Schools—Nursery Schools are designed for children under five. Nothing approaching formal education is contemplated in these communities where the principal aim is to let children learn to live and play together. They are happy, active places which help the child to learn to curb his own desires for the benefit of others. Where it is not expedient to provide a separate school, nursery classes may be formed within the framework of a larger primary school.

Infants' Schools—Between the ages of five and seven the child passes through the infants' school where, although there is still a good deal of play, the beginnings of work are to be seen. By the time they leave, most children can read simple books fluently and have acquired a reasonable facility in the use of number.

Junior Schools—The real foundations of later education are laid at this stage which caters for children between the ages of seven and eleven. There is more formal work and, some six months before they leave, the children pass through a selection procedure which determines the kind of secondary education for which they are best suited according to their ability and aptitude. This sometimes takes the form of the 'eleven plus' examination consisting of papers in Arithmetic and English coupled with an intelligence test. Some authorities are now experimenting with a more flexible form of selection which, they hope, will remove many of the terrors of which the more formal examination is accused. There is manifestly the possibility of error at this stage, and local education authorities provide facilities for bilateral transfer between different kinds of secondary school at a later date.

10 The Secondary Stage

Secondary school provision is of three kinds—Grammar, Technical and Modern. At the age of eleven plus, children are normally drafted either to a grammar school or to a modern school. Some authorities still retain the schools approximating to the former 'central schools' and some are experimenting with various kinds of comprehensive school. Selection to secondary technical schools is usually made after two years in a modern school, but a number

of authorities admit pupils to these courses from the age of eleven-plus

Grammar Schools—These include the ancient foundations and also the schools (variously known as *Secondary Schools*, *County High Schools*, etc.) established under the Education Act of 1902. They provide a five-year basic course leading to the Ordinary level of the General Certificate of Education and continuing, for selected pupils, to two or three years' sixth form studies for the Advanced level. The schools are designed for the top academic flight of children and are the principal means of entry to the universities and professions.

Technical Schools—These provide courses planned for children whose manual dexterity is well above the average, but who are not so brilliant academically as the grammar school child. Entry is normally at thirteen-plus, though sometimes at eleven, and the various courses lead to apprenticeships in a wide variety of occupations. They cater for children who will enter skilled trades, but whose further formal education will probably be on a part-time basis, as well as for those who will go on to technical colleges or technological courses in universities. In addition to the purely technical side, many of these schools have commercial and art courses.

Modern Schools—Most children go, at eleven plus, to a secondary modern school. These schools, first envisaged in the Hadow Report,¹ are now beginning to find their feet. The courses are designed for children whose intelligence is, at best, not greatly above the average and which may well be below. Consequently, they are more practical in their approach. Some children stay on beyond the end of the basic four-year course and a large proportion of such children have shown themselves capable of taking a limited number of subjects at the Ordinary level of the General Certificate examination. Some pressure has been put on the Minister to recognize for grant aid the entrance fees for examinations specially designed for this kind of school but, at the time of writing, there are no signs that he is prepared to do so.

Central Schools—This name is no longer used officially and the

¹ *The Education of the Adolescent* (H M S O, 1926)

remaining schools of this kind are known simply as secondary schools. They have a fairly selective entry at eleven plus and cater for children who are likely to proceed as far as the Ordinary level of the General Certificate of Education in four or five subjects, but no further.

Comprehensive Schools—Experiments have been made in recent years in the introduction of a new kind of secondary school which takes all the children of that age-range from a particular area and places them in academic or non academic streams in a single school. It is claimed that the advantages lie in the greater homogeneity of such a unit and the fact that the duller child will not be stigmatized because he 'only went to a modern school'. Furthermore, it is claimed that transfer between the streams after entry is easier than transfer between different types of secondary school. The disadvantage seems to lie in the size of the school—one head cannot possibly know every member of a community which consists of two thousand children and a hundred staff, and some breaking down is essential. Where the school is organized as several separate units according to academic streaming, it is known as a mulilateral school or, where there are only two streams, as a bilateral school. In the true comprehensive school the units contain a cross section of pupils of widely varying abilities.

11 All age Schools

The reorganization of education under the terms of the Hadow Report and the 1944 Act has considerably reduced the number of schools in which pupils stay, as a rule, from the age of five until the end of their school lives. Indeed, the Act definitely envisages the passing of these establishments.¹ The unreorganized school has certain advantages, especially where there is a strong tradition, since the children pass the whole of their school days in a single, stable environment. There is often, too, a strong family atmosphere which is lacking in schools where the age range is smaller. Many all age schools still remain, and are likely to do so for some considerable time.

¹ Education Act 1944, s. 8 (2) (a)

12 Further Education

Technical Colleges and Institutes—These are places of further education provided by local education authorities or, more rarely, by voluntary bodies. They are designed for full- or part-time students wishing to qualify themselves in their work after following a General Certificate course or during apprenticeship. Many undertake work up to honours degree standard and have acquired a reputation far beyond their own neighbourhood.

Evening Institutes—These provide part time education on the lines already noted in the previous paragraph, although not usually to such an advanced standard. They may be part of a Technical College or they may be arranged in a number of centres. A wide variety of courses, cultural as well as vocational, is frequently provided in such establishments.

County Colleges—All young people under the age of eighteen may be required, if they are not receiving full-time education or otherwise exempted, to attend classes for a whole day a week for forty-four weeks of the year, or the equivalent of such time. If the local education authority deems that continuous attendance would be more suitable, a young person may be required to attend for a continuous period of eight weeks, or two periods of four weeks, during each year.¹ The heavy cost and the considerable administrative needs of implementing the more urgent requirements of the 1944 Act in respect of primary and secondary education have enforced a considerable delay in bringing this section into force.

13 Special Schools

In addition to the schools mentioned above, local education authorities must provide facilities for children who need specialized treatment. These include 'E S N' schools for the mentally retarded and open air schools for the delicate. A number of authorities maintain boarding schools for pupils whose well-being will be promoted by residential school life. Special schools are also provided for maladjusted children, and authorities may establish approved schools, which are residential schools to which the courts may commit children in certain circumstances.²

¹ Education Act, 1944, ss 43-46

² See page 172

14 Independent Schools

The independent schools stand outside the statutory system of education although some, known as direct-grant schools, receive aid from the Ministry. They range from the well known foundations, often called public schools, which are administered under a trust deed, to small schools conducted for private profit. Parliament has now taken cognizance of the existence of all such schools.¹ Formerly, they were liable to inspection only if they asked for grant-aid. In all other cases inspection was voluntary. Section 70 of the Act, which provides for the registration and inspection of all independent schools, was implemented in the autumn of 1957.

Where an independent school receives financial aid directly from the Ministry, and not through the local education authority, it is known as a 'direct grant' school. Such schools must reserve a quarter of their places as free places for pupils selected by the education authority for the area in which the school is situated.

Education Act, 1944, ss 70-75

II

THE CONDUCT OF SCHOOLS

1 Primary Schools

Primary schools are conducted by a body of Managers¹ who are appointed under an Instrument of Management which is made by the local education authority in the case of county schools and by the Minister for voluntary schools. Their powers are defined by Rules of Management drawn up by the local education authority. The principal executive officer of the managers is known as the Correspondent.

2 Secondary Schools

Secondary schools are conducted by a board of Governors² who are appointed under an Instrument of Government which is made by the local education authority in the case of county schools and by the Minister for voluntary schools. Their powers are defined by Articles of Government which are made by the local education authority (with the Minister's approval) for county schools, and by an order of the Minister for voluntary schools. Such articles determine the respective functions of the local education authority, the board of governors and the head of the school. The principal executive officer is known as the Clerk to the Governors.

3 All-age Schools

All-age schools, containing pupils of both primary and secondary school ages, are conducted in all respects as though they were primary schools.³

¹ Education Act, 1944, s. 17

² Education Act, 1944, s. 17

³ Education Act, 1944, s. 31 (2)

4 Grouping of Schools

A number of schools may be grouped together under the same body of managers or governors.¹ Where this is done, the schools are generally, though not necessarily, of a similar kind. Primary and secondary schools are not usually grouped together although the Act expressly states that this may be done. As a rule, it is not practicable to group county and voluntary schools under the same body, and such a scheme requires the consent of the local education authority, the Minister and the managers or governors of the schools concerned. To further the development of the comprehensive system of secondary education, however, the London County Council has in some cases added modern and technical streams as a 'county complement' to an existing voluntary grammar school, the whole being conducted by a single governing body.

5 Instruments of Management or Government

The instrument defines the constitution of the managing or governing body and lays down the procedure by which its members are appointed. Instruments vary somewhat to suit particular circumstances but, in general, the following matters are included

1 Constitution, including *ex officio* members, if any. The total membership must not be fewer than six and must, in any case, be a multiple of three, in the case of primary schools. In county secondary schools the number is determined by the local education authority, and in voluntary secondary schools by the local education authority in consultation with the Minister. In the case of voluntary secondary schools the total must be a multiple of three.

2 Terms of office of managers or governors

3 Prohibition of the appointment as managers or governors of any person having a financial interest, except as a trustee, in the school

4 Prohibition of the appointment of teachers as managers or governors of the school in which they are serving

¹ Education Act, 1944, s. 20

5 Provision for the determination of membership through failure to attend meetings, bankruptcy, incapacity or resignation.

6 Provision for competent bodies to appoint new members to fill seats vacated by their representatives

7. Method of appointment of chairman and vice chairman

8 Procedure for summoning and adjourning meetings and rescinding resolutions

9 Frequency of meetings These must, by law, be held at least once a term ¹

10 Provision for keeping a record of the attendance of members

6 Rules of Management and Articles of Government

These are rules for the general guidance of managers and governors in the conduct of schools ² They deal with the powers of managers or governors, the relationship between the governing body, the local education authority and the head, and between the governing body and the school Rules and articles vary somewhat from place to place and according to the type of school, but the following are among the matters usually included

1 The management of the school must be in accordance with the appropriate regulations of the Minister and of the local education authority

2 The managers or governors are responsible for certain matters connected with maintenance and for obtaining the necessary estimates

3 The respective functions of the managers or governors and the local education authority in connection with the appointment of teaching and non-teaching staff are defined

4 In county and controlled schools the correspondent or

¹ Education Act, 1944, Schedule IV, as amended by the Education (Miscellaneous Provisions) Act 1948 Schedule I, Part I

² Education Act, 1944, s 17 (3) and Schedule IV, as amended by the Education (Miscellaneous Provisions) Act, 1948, s 11 (1) and Schedule I, Part I See also, *Principles of Government in Maintained Secondary Schools* (H M S O, 1944)

clerk to the governors is appointed by the authority, in aided and special agreement schools, the governing body may appoint.

5 The managers or governors have general control of the school and must take appropriate action within their powers, in matters where they have no power to act they must notify the local education authority of anything requiring attention

6 The educational character of the school is determined by the local education authority

7 Responsibility for the whole internal organization, management and discipline of the school is vested in the head, together with the control of both teaching and non teaching staff and the power to suspend pupils from attendance

8 Provision is made for full consultation between the head, the managers or governors and the local education authority, and opportunity is given for the assistant staff to make representations

9 The head is entitled to attend throughout the meetings of managers or governors unless excluded for good cause during the discussion of specific business

10 Holidays are, in general, determined by the local education authority, the granting of occasional closures¹ being within the discretion of the managers or governors

11 The managers or governors must furnish the local education authority with such returns as may be required

12 A copy of the rules of management or articles of government must be given to every teacher on appointment

7 County and Minor Authorities

A county authority² is the county council, county borough council or joint education board which is the local education authority for the area in which the school is situated

A minor authority³ is a borough, urban district or rural parish which appears to the local education authority to be the area

¹ See page 106

² Education Act 1944 s 6 (1) and Schedule I, Part I

³ Education Act, 1944 s 114 (1)

served by the school. Where a school serves two or more areas the minor authority comprises the councils of those areas, acting jointly. The minor authority has the right to appoint a certain proportion of the managers of a primary school. In the case of a secondary school the constitution of the governors is determined by the instrument of government and there is no legal obligation to include representatives of the minor authority.

There are no minor authorities in a county borough. In such areas all the managers or governors (other than foundation or *ex officio* members) are appointed by the county borough council or such other bodies as may be named in the instrument.

It is not necessary that a representative manager or governor should be a member of the body which appoints him.

8 County Schools

In county primary schools, two-thirds of the managers are appointed by the local education authority and one-third by the minor authority where there is one ¹

The governors of county secondary schools are appointed in accordance with the instrument of government ²

The whole cost of the provision and maintenance of county schools falls to the charge of the local education authority. Religious education and worship must be undenominational in character.³

9 Aided Schools

Two-thirds of the managers of an aided primary school are appointed by the voluntary body providing the school, and are called *foundation managers*. Their particular duty is to ensure that the school is conducted in accordance with the terms of any trust deed. Of the remaining managers, not less than one-third nor more than one-half are appointed by the minor authority, if any. The remainder are appointed by the county authority ⁴

The governors of an aided secondary school are appointed in

¹ Education Act, 1944, s. 18 (1) and (2)

² Education Act, 1944, s. 19 (1)

³ Education Act, 1944, s. 26

⁴ Education Act, 1944, s. 18 (3)

the proportions of two-thirds foundation governors to one-third local education authority representatives¹

The cost of improving or enlarging the school building² is the responsibility of the managers or governors,³ subject to a maintenance contribution of fifty per cent from the Minister.⁴ Other buildings or capital expenditure, e.g. playing fields, canteens, kitchens, etc., must be provided by the local education authority⁵ in such cases, all additions to the site (other than playing fields) must be conveyed to the trustees.⁶

Religious education is under the control of the foundation managers and must be in accordance with the trust deed or, where there is no deed, in accordance with the practice in the school before it became aided. Agreed syllabus instruction must be provided for children who cannot be conveniently educated elsewhere, if their parents request it.⁷ The secular instruction in an aided primary school is under the control of the local education authority, in secondary schools of the governors.⁸

Teachers are appointed by the managers or governors⁹ subject to the establishment and educational standards prescribed by the local education authority, which may prohibit the appointment of any particular person to be employed for giving secular instruction, or require his dismissal if, in the authority's opinion, he is unsuitable for that purpose. Teachers are the servants of the managers or governors and not of the authority,¹⁰ although, since

¹ Education Act, 1944, s. 19 (2) (b)

² School buildings are defined as any building, or part of a building, forming the school premises except those required only as a caretaker's dwelling, in connection with school playing fields, for medical purposes or for the provision of milk, meals or other refreshment. (Education Act, 1946, s. 4 (2))

³ Education Act, 1944, s. 15

⁴ Education Act, 1944, ss. 102-105, as amended by the Education (Miscellaneous Provisions) Act, 1953, s. 8. See also the Schools Grant Regulations, 1951, No. 20, as amended by the Schools Grant Amending Regulations, No. 4, 1953.

⁵ Education Act, 1946, s. 3 and Schedule I

⁶ Education Act, 1944, s. 28

⁷ Education Act, 1944, s. 23 (1) and (2).

⁸ Education Act, 1944, s. 24 (2)

⁹ *Crocker v. Plymouth Corporation* (1906) 1 KB 494

their salaries form part of the authority's liability in maintaining an aided school, they are usually directly paid by the authority

The schoolkeeping staff is appointed by the managers or governors, subject to the general requirements of the authority ¹ The school meals staff is appointed by the local education authority in accordance with the Minister's regulations The appointment of secretarial staff is in accordance with the rules of management or articles of government

In general, the managers or governors are responsible for the exterior maintenance and repair of the building (with a fifty per cent maintenance contribution from the Minister), the local education authority for the interior The local education authority maintains the playground and playing fields ²

The local education authority may require the free use of the buildings for any educational purpose or for the welfare of the young on not more than three days in any week, when they are not in use as a school, provided that no other suitable accommodation is available ³

10 Controlled Schools

One third of the managers of controlled primary schools are foundation managers, of the remainder, not less than one-third nor more than one half are appointed by the minor authority, if any, the remainder by the local education authority ⁴

One-third of the governors of controlled secondary schools are foundation governors, the remainder are appointed by the local education authority ⁵

The local education authority bears the whole cost of improvements and additions to the school⁶ and, if these are on the original site, their ownership must be vested in the trustees This need not be done, however, in the case of a new controlled school

¹ Education Act, 1944, s 22 (4)

² Education Act, 1944, s 15 (3)

³ Education Act 1944 s 22 (2)

⁴ Education Act 1944 s 18 (3)

⁵ Education Act 1944 s 19 (2) (a)

⁶ Education Act, 1944, s 15 (3)

Religious education must be in accordance with an agreed syllabus,¹ but denominational instruction must be provided, for not more than two periods a week for those pupils whose parents request it.² The nature of the daily act of worship is not specified but, unless the Minister makes a direction to the contrary, it may be in accordance with the trust deed or, if there is no deed, in accordance with the practice in the school before it became controlled.

Teachers are appointed by the local education authority which must, however, consider representations from the foundation managers or governors in appointing the head. Reserved teachers must be appointed.³

The whole cost of the maintenance of the school and the buildings is borne by the local education authority,⁴ which also appoints the non teaching staff.⁵

The use of the school is reserved to the foundation managers on Sundays, and on Saturdays if it is not required by the local education authority for the purposes of the school or the welfare of the young.⁶

11 Special Agreement Schools

Schools of this kind fall into two categories ?

(a) those in respect of which proposals were made within the time-limit permitted by the Education Act, 1936, but where the proposals were not carried out because of the outbreak of war. There are nearly five hundred schools in this group and the schedule contains provisions for the revival of these proposals,

(b) those schools in respect of which the proposals made

¹ Education Act, 1944, s. 27 (6)

² Education Act, 1944, s. 27 (1)

³ Education Act, 1944, s. 27 (2) to (5) For a discussion of the position of reserved teachers, see pages 58-59

⁴ Education Act, 1944, s. 15 (3)

⁵ Education Act, 1944, s. 22 (4)

⁶ Education Act, 1944, s. 22 (1)

⁷ Education Act, 1944, Schedule III, 11

under the 1936 Act had been carried out before 1 April 1945. There are thirty-seven schools in this group.

The constitution of managing and governing bodies is the same as in the case of an aided school.¹

In the case of a new school, capital expenditure on the building is met by the voluntary body with a grant of not more than fifty per cent from the local education authority.² Where the special agreement school is to provide accommodation for displaced pupils, the cost is met by the voluntary body with a grant of not more than fifty per cent from the Minister towards such part as the Minister may determine to be attributable to the provision of places for displaced pupils.³

The provisions for religious instruction are as in the case of an aided school.⁴ The position with regard to worship, however, is the same as in a controlled school.⁵ Except as may be otherwise provided in the articles of government, secular instruction is under the control of the local education authority.⁶

The teaching staff is appointed under the same conditions as in a controlled school,⁷ with similar provisions regarding the appointment of the head and of reserved teachers. The proportion of reserved teachers, however, is not fixed by the Act, and is determined jointly by the proposers of the school and the local education authority. Seventy-five per cent is a usual figure.

The non-teaching staff is appointed by the local education authority.⁸

The arrangements for the maintenance of the premises are the same as in the case of an aided school.⁹

The local education authority may require the use of the

¹ See page 39.

² Education Act, 1944, Schedule III, 4 and 5, as amended by the Education (Miscellaneous Provisions) Act, 1948, s. 11 (1) and Schedule I.

³ Education Act, 1944, s. 104 and Education (Miscellaneous Provisions) Act, 1953, s. 1.

⁴ See page 40.

⁵ Education Act, 1944, s. 23 (1).

⁶ See page 42.

⁷ Education Act, 1944, s. 22 (4).

⁸ See page 40.

⁹ See page 42.

premises for educational purposes or for the welfare of children when they are not in use as a school. Such use is limited to not more than three days in any one week, and conditional upon there being no suitable alternative accommodation available.¹

¹ Education Act, 1944, s. 22 (2)

III

THE STATUS OF TEACHERS

1 Duties of Local Education Authorities

The Minister's requirements concerning the staffing of schools are binding upon all maintained schools as follows ¹

(a) every nursery school must have a qualified superintendent teacher,

(b) every other school must have a qualified head who takes an appropriate part in the teaching of the school, and

(c) every school must have a qualified teaching staff which is adequate in all respects

The regulation provides for certain relaxations of these requirements

(a) teachers in service before 1 April 1945 in schools maintained or aided by a former authority may continue to be employed or, in the case of supplementary teachers, may be re-employed subject to the approval of Her Majesty's Inspector

(b) temporary or occasional teachers may be employed in accordance with Schedule I of the regulations,²

(c) a nursery school which is one of a group under a qualified supervising teacher may, with the Minister's approval, have an unqualified superintendent teacher whilst it is so grouped,

(d) a teacher who was a head immediately before 1 April 1945 may, even though unqualified, continue to be the head of that school or, with the Minister's approval, be appointed to another headship,

(e) a person who is not a teacher may, with the permission of

the Minister, be appointed to the assistant staff of a nursery school or class if she has satisfactorily completed a course of the Senior and Supplementary Child Care Reserve type, or has other approved qualifications

2 Qualified Teachers

To obtain qualified status a teacher must complete, to the satisfaction of the Minister, an approved course of training, or possess special qualifications which are approved by the Minister ¹

The Minister's requirements are set out in Circular 284 (Revised) dated 1 October 1956 in respect of qualified teachers and temporary teachers. Additional requirements under Regulation 39 of the School Health Service and Handicapped Pupils Regulations, 1953, in respect of qualifications and service by qualified teachers in special schools, are set out in Circular 269

3 Approved Courses of Training

The Area Training Organizations are responsible for the examination and assessment of students who have taken one of the following courses of training, and the Minister awards qualified status when a student has been so recommended

(a) a course under the Ministry's Training of Teachers Grant Regulations, other than a short course or a course of preliminary education and training,

(b) a course in the University of London Institute of Education's Department for Education in Tropical Areas for the post graduate Certificate in Education,

(c) a course in the University of London Institute of Education for the post graduate Certificate in Education with special reference to the teaching of English as a foreign language,

(d) a course of training at a college recognized as efficient under the Ministry's Rules 16 ²

¹ Schools Grant Regulations, 1951, No. 11 (2)

² The following colleges are at present (1958) so recognized
Westhill Training College, Selly Oak, Birmingham,
Coloma Training College, West Wickham,
Manresa College, Rochampton,
Charlotte Mason College Ambleside

The following courses are also approved by the Minister, but no assessments are made in respect of them by the Area Training Organizations

(a) a three-year course (other than one under the Ministry's Training of Teacher Grant Regulations) leading to the award of Certificate A of the National Froebel Union or Foundation Reference should be made to the Ministry in the case of other Froebel certificates,

(b) a course leading to recognition under Chapters IV, V or VI of the Scottish Education Department's Regulations for the Training of Teachers,

(c) a course leading to recognition as a certificated teacher in primary or secondary schools under the regulations of the Ministry of Education for Northern Ireland,

(d) a three-year course as a teacher of Domestic Science at the Belfast College of Technology

4 Special Approved Qualifications

Graduates of universities within the British Isles and holders of the qualifications listed in the appendix to Circular 284 (Revised) will, for the time being, be recognized by the Minister as qualified teachers, with one exception. This exception applies to those who, holding a degree or one of the other recognized qualifications, subsequently take an approved course of training and are not recommended to the Minister for recognition at the end of the course. Such persons will not be recognized as qualified unless and until they have been so recommended (This can lead to a curious anomaly. At an interview several years ago two of the candidates had identical degrees. One had taken no course of professional training, the other had failed the examination at the end of the course. The governors appointed the candidate who had been trained but, because of his failure, he was entitled only to unqualified pay until he had retrieved his position a year later. Had the other candidate, with no training whatsoever, been appointed, he would have ranked as a qualified teacher.)

The appendix to Circular 284 gives a long list of qualifications

in Art, Commercial Subjects, Handicraft, Modern Languages, Music, Nautical Subjects, Needlecraft, Religious Instruction, Science, Technology and Speech and Drama which are recognized by the Minister for the purpose of qualification. The list is not intended to be exhaustive and, as mentioned in the next section, it is possible for some who do not fall within the categories listed to be recognized. It is made clear, however, that qualification in such subjects as Typewriting, Shorthand and Book keeping is not in itself sufficient to justify recognition.

The grant of qualified status in virtue of qualification through one of the certificates listed in the appendix does not limit the particular form of instruction which the teacher may give. It is for the employing authority to decide whether a teacher is qualified to give instruction in a particular subject or to be appointed to a particular post.

5 Special Cases

If an authority wishes to appoint as a qualified teacher a person who does not possess an approved qualification, the Ministry must be consulted. In certain cases the Minister has granted qualified status on a combination of qualifications none of which, by itself, would have justified the award. Possession of a qualification of good standing, coupled with evidence of a substantial period of satisfactory teaching service, may also be approved.

A teacher who does not possess one of the qualifications listed in the appendix to Circular 284, but who holds one which is listed in the Burnham Report (Primary and Secondary Schools) as a graduate equivalent, will be considered for the award of qualified status on application from an employing authority.

The Minister is prepared to recognize courses and qualifications taken in the British Commonwealth and in other countries if they appear to be of a standard equivalent to British qualifications. The length of the list precludes the publication of details of all the courses which have been so recognized and employing authorities should consult the Ministry about all qualifications, including degrees, obtained overseas.

6 Long Service

Teachers who, at any time between 1 April 1945 and 31 March 1950, completed not less than twenty years' service as an uncertificated teacher (or full-time teachers in any other type of school covered by the regulations who would have been eligible for recognition as uncertificated teachers) are regarded as qualified teachers from 1 April 1945, or from the date when they completed twenty years' service, whichever is the later.

Teachers who could have completed twenty years' service in this category, but whose service has been broken, can be considered if they have served for at least ten years

7 Verification of Qualifications

An employing authority is required to verify without delay the qualifications of teachers appointed to its service

The Ministry issues a notification to teachers who complete satisfactorily the courses of training which are subject to assessment by the Area Training Organizations. This states the date from which the teacher is recognized as qualified

In cases submitted for the Ministry's confirmation, salary is not payable at the qualified rate until the approval of the Ministry has been notified to the employing authority.

8 Probation

The first year of service as a qualified teacher is probationary in character and, during it, the teacher must satisfy the Minister of his practical proficiency as a teacher¹ For any teacher trained under the one-year emergency scheme the period of probation is two years unless the teacher has completed further full-time education to a more advanced level

In exceptional circumstances the Minister may extend, reduce or waive the period of probation

Probation can be served only in a maintained or assisted primary or secondary school, or in a school (other than a direct-grant grammar school) which receives grants direct from the

¹ Schools Grant Regulations, 1951, Schedule II 2 and School Health Service and Handicapped Pupils Regulations, 1953, Schedule I 2

Minister, or in a special school to which the School Health Service and Handicapped Pupils Regulations, 1953, No 39 (2) applies. A teacher appointed to a school which does not fall within these categories does not lose his eligibility for qualified status, but the probationary requirement and subsequent confirmation of status remain in abeyance until he serves in such a school.

During probation the teacher's work is supervised under suitable conditions. If, after probation, the Minister declares a person to be unsuitable for recognition as a qualified teacher, he may not be so employed.

9 Future Policy

It is intended that, in the future, no teacher shall be regarded as qualified unless he has completed a course of professional training or possesses exceptional qualifications. When this policy is brought into force, graduates will no longer be automatically qualified for recognition. This will not affect the status of those already recognized.

It is not yet known when this will be made a general requirement.

10 Special Schools

Special requirements are laid down in respect of teachers in special schools.¹

Each special school must have a qualified head who takes an appropriate part in the teaching of the school and a staff of qualified assistants suitable and sufficient in number to provide full time education suitable to the ages, abilities and aptitudes of the pupils.

Qualification depends on the completion of an approved course of training or the possession of special qualifications approved by the Minister. In addition

(a) teachers of such categories of handicapped pupils as the Minister may think fit must possess, or obtain within an

¹ School Health Service and Handicapped Pupils Regulations, 1953, No 39 and Circular 269

approved period, such additional qualifications as the Minister may require;

(b) any teacher in any kind of special school may, if recognized before 1 April 1945, continue to be employed in the same capacity and kind of special school and, if he was recognized as a teacher of the blind, he may be employed in a school for partially-sighted pupils,

(c) any person who taught in a school for blind pupils before 1 April 1945 may be employed in any school for blind pupils,

(d) temporary and occasional teachers may be employed

11 Temporary Teachers

A person over the age of eighteen may be recognized by the Minister for employment as a temporary teacher for a period not exceeding five years ¹ The initial period of approval will not be for more than two years and an extension will be granted only if one of the following reasons applies

(a) the employing authority cannot fill the vacancy with a qualified teacher,

(b) the teacher has applied (or intends to apply immediately) for admission to an approved course of training as a teacher,

(c) the teacher is actively pursuing a course of study which will lead to qualified status within a reasonable period,

(d) the teacher, having failed to complete an approved course satisfactorily, has an opportunity to retrieve his failure

The employment of men as temporary teachers is restricted to the following groups

(a) applicants who have completed, or who are exempt from, national service, who intend to enter the profession and who have a definite offer of admission to an approved course,

(b) teachers completing the requirements of the City and Guilds of London Institute for the Teacher's Certificate in Handicraft,

¹ Schools Grant Regulations, 1951, Schedule I 1 and School Health Service and Handicapped Pupils Regulations, 1953, Schedule II 1

(c) students who wish to obtain a temporary post until they can retrieve their failure in an approved course;

(d) certain teachers with qualifications to teach certain subjects in secondary schools, but whose qualifications are below those required for recognition as qualified teachers

Temporary teachers must have passed one of the examinations qualifying for admission to an approved course of study, or hold some other approved qualification. Temporary teachers in nursery schools or classes must have completed satisfactorily a course of instruction of Senior and Supplementary Care Reserve type, or hold another approved qualification.

12 Occasional Teachers

In an emergency, or on a special occasion (but not over a prolonged period), it is permissible to employ a person who is not qualified for employment as a regular assistant teacher.¹ Such employment may, in special circumstances, be for part-time instruction in approved subjects.

13 Health

Subject to the provisions of the Disabled Persons (Employment) Act, 1944, a teacher must satisfy the Minister of his health and physical capacity for teaching unless he has already done so for the purposes of the Teachers (Superannuation) Acts, 1918-56.²

14 Professional Register

The Education (Administrative Provisions) Act, 1907, established a Council representative of the teaching profession with the power to form and keep a register of qualified teachers. In 1926 provision was made for the Council to be elected directly by the teachers on the register. Of the fifty members of the Council, two were co-opted and the remaining forty-eight elected in equal

¹ Schools Grant Regulations, 1951, Schedule I 2 and 3, and School Health Service and Handicapped Pupils Regulations, 1953, Schedule II 2 and 3.

² Schools Grant Regulations 1951, Schedule II 1, and School Health Service and Handicapped Pupils Regulations, 1953, Schedule I 1.

numbers by university, elementary school, secondary school and specialist teachers

In 1929 an Order in Council formed the registered teachers into the Royal Society of Teachers and entitled them to use the designation, M R S T Registration was voluntary and subject to the payment of a life membership fee At no time did the register contain the names of more than a small minority of teachers

Before the passage of the 1944 Act the Board of Education had recognized only teachers in public elementary schools From 1 April 1945, however, all teachers in maintained and assisted schools became subject to recognition by the Ministry and in 1948 the Royal Society of Teachers ceased to accept new members It was incorporated in the Ministry of Education, the interests of existing members being safeguarded

IV

CONDITIONS OF SERVICE

1 Types of Appointment

Teachers may be appointed in a number of ways

(a) *to the staff of a school*—This is the most usual kind of appointment. It is not normally possible to transfer teachers so appointed to the staff of another school without their consent.

(b) *to the service of an authority*—In such cases the teacher must be prepared to serve in any school and in any teaching capacity which the employing authority may determine. An example of this kind of appointment is the London Divisional Staff whose members may be used anywhere in the division to which they are appointed. In practice, however, they are normally left for considerable periods in one school.

(c) *to the authority's unattached staff*—These appointments are similar to those in the last category but the teachers concerned are really 'permanent supply' teachers and are used to fill vacancies caused through the absence of regular members of the staff of a school. Some authorities also maintain a small staff of unattached heads who can be used in a similar way during the absence of the permanent head of a school.¹

2 Appointment

Most vacancies are advertised in the educational press. The majority are for open competition and any suitably qualified teacher may apply. In some areas, however, certain promotion appointments are limited to a particular range of candidates. The

¹ See page 72

headships of county primary schools in London, for example, are restricted to those on the Council's promotion list

Applications must usually be made on a form provided by the authority. When a form is not issued the particulars should be tabulated by applicants in such a way that they may be read easily.¹ The information given must be accurate since it will form the basis of the contract between the authority and the successful candidate. The suppression of *material facts* or the inclusion of information which is false within the candidate's knowledge may lead to the withdrawal of an offer, to dismissal if the appointment has been taken up, or even to prosecution.²

A teacher³ appealed against his dismissal by an authority which claimed that his application had been false within his knowledge through wilful omissions and the suppression of material facts. In giving judgement for the Council, Mr Justice McCardie said that the authority was right in requiring high standards from its teachers because, otherwise, the children would suffer.

The Ministry requires a medical examination before a first appointment is taken up.⁴ Some local authorities also require a medical check-up including, in some cases, a satisfactory chest X-ray examination when a serving teacher enters their service from the area of another authority.

Sometimes an appointing committee merely has the power to recommend an appointment to the local education authority and a candidate may be told that it will not be possible to confirm the offer for some weeks. It may be that this delay will mean that the candidate will have to resign an existing appointment before the new one is confirmed, if he is to be free to join his new school when required. It is then reasonable to ask whether it is safe to

¹ It should be superfluous to add that the writing should be legible, but every head has suffered much from badly written applications. Unless there is a specific instruction to the contrary, it is now generally accepted that applications may be typewritten. In such cases a brief covering letter may be enclosed in the candidate's own hand.

² The inclusion of false testimonials may lead to a prosecution under the Servants' Characters Act, 1792. The whole question of testimonials and references is dealt with on pages 194-199.

³ *Watts v London County Council* (1932), *Times*, 9 December 1932.

⁴ See page 52.

resign. Usually it is, but there must always remain the risk that the appointment may not be confirmed.

In one case the managers of a school passed a resolution appointing a candidate. This fact was not officially communicated to the teacher but was casually mentioned to him by a manager. At a later meeting the resolution was rescinded and another candidate was appointed. The rejected candidate claimed damages for breach of contract¹ but the court held that, as the appointment had not been properly communicated, there was no concluded contract to break.

The first appointment of a qualified teacher in a maintained or assisted school is subject to probation².

3 The Agreement

When an appointment has been confirmed, the teacher will generally receive two copies of an agreement, one of which must be signed and returned to the authority. Alternatively, he may receive a notification of appointment under minute. A teacher must be furnished with a copy of the agreement or minute under which he is appointed, together with any regulations referred to therein, unless he is given an opportunity of acquainting himself with the rules in some other way³.

The candidate should read the agreement carefully before signing it, and be certain that he understands its terms since they form the contract between him and his employer. The principal points covered in an agreement are

(a) Date of commencement of appointment,

(b) School (if applicable) and capacity in which the teacher is to be employed, whether as head or assistant, whether full- or part time, and whether partly as a teacher and partly in some other capacity,

¹ *Powell v Lee* (1908), 72 JP 353

² See page 49

³ School's Grant Regulations, 1951, Schedule II 3, and School Health Service and Handicapped Pupils Regulations, 1953, Schedule I 3

(c) Reference to the regulations under which the teacher is employed;

(d) Provision for termination of the agreement by either side on giving:

(i) two months' notice¹ terminating on 31 December or 30 April;²

(ii) three months' notice¹ terminating on 31 August;³

(e) Unless the teacher is employed partly as a teacher and partly in some other capacity (or in a boarding school), he may not be required to perform any duties except such as are connected with the work of a school; nor may he be required to abstain, outside school hours, from any occupations which do not interfere with the due performance of his duties;⁴

(f) Reference to the salary scales and the frequency of payment of salary;

(g) Provision for the suspension and dismissal of the teacher;

(h) In the case of a reserved teacher in a controlled or special agreement school, a reference to this fact and the requirements contingent upon it.

In aided schools teachers are appointed by the managers or governors and the agreement is therefore made with them and not with the local education authority which maintains the school.

Occasionally an authority issues revised agreements in respect

¹ For heads the period of notice is one month longer than for assistants

² When the teacher's resignation is to take effect in April there is normally a provision that, if his new school begins the summer term before 1 May, the teacher will be released from such earlier date.

³ As this book goes to press, it is announced that, in view of the changes made by the Teachers (Superannuation) Act, 1956, the representatives of the local authorities and of the teachers have agreed to recommend the inclusion of an additional clause in teachers' agreements. This will provide for automatic retirement at the end of the term in which the teacher attains the age of sixty-five. Service may be extended beyond this age by mutual agreement between the teacher and the local authority and, during such an extension, all other terms of the agreement will remain in force.

⁴ This clause *must* be included, in compliance with the Schools Grant Regulations, 1951, Schedule II. 3 (3) and the School Health Service and Handicapped Pupils Regulations, 1953, Schedule I 3 (3)

of all its teachers. This is done to bring existing teachers into line with new terms of service which have been agreed nationally between the local education authorities and the professional associations. Refusal to sign could be followed by dismissal which might, though not necessarily, be accompanied by an offer to re-appoint in accordance with the new terms. Teachers should not sign substituted agreements unless advised to do so by their professional associations.

4 Married Women

The 1944 Act removed the disqualification which was at one time imposed on married women as full time teachers. No woman may now be disqualified or dismissed from appointment by reason only of marriage.¹

5 Reserved Teachers

In controlled and, normally, in special agreement schools a certain proportion of the staff must be appointed as reserved teachers. These are persons specially selected for their fitness to give religious instruction according to the tenets of the providing body.²

In controlled schools reserved teachers must form not more than one-fifth of the total teaching staff, when the establishment is not a multiple of five it is, for this purpose, treated as though it were the next highest multiple. The head is not a reserved teacher, but is included in the staff for the purpose of calculating the number of reserved teachers.

In special agreement schools, the agreement will state whether reserved teachers are to be appointed, and will specify the proportion of the staff to be reserved. Seventy five per cent is a usual figure.

Although the local education authority appoints the whole

¹ Education Act, 1944 s. 24 (3)

² Education Act 1944 s. 27 (2) to (5) and s. 28 (3) and (4)

teaching staff of such schools, the foundation managers or governors must be consulted before a reserved teacher is appointed. The foundation managers or governors may also require the local education authority to dismiss a teacher from being a reserved teacher in their school on the grounds that he is not competent to give the religious instruction for which he is appointed. This does not, however, preclude the authority from appointing the same person as a non-reserved teacher in the same school.

6 Corruption in Office

If an officer of a local authority, under colour of his employment, exacts or receives any fee or reward whatsoever other than his proper remuneration, he is liable on summary conviction to a fine not exceeding twenty pounds.

7 Pecuniary Interest

If an officer of a local authority knows of a contract in which he has any pecuniary interest, whether direct or indirect, which has been (or is proposed to be) entered into by the authority or any of its committees in office he must, as soon as practicable, give notice of his interest to the authority in writing.¹

8 Membership of Local Authorities

A paid officer of a local authority who is employed under the direction of a committee or sub-committee of the authority, any member of which is appointed on the nomination of some other authority, is disqualified from being elected to, or being a member of, that other local authority.² This has been amended so that no person is disqualified from membership of a county district council because he is a teacher in any educational institution maintained or assisted by a local education authority.³

An important test case on this subject was heard before the

¹ Local Government Act, 1933, s. 123 (1)

² Local Government Act, 1933, s. 59 (2)

³ Education Act, 1946, s. 10 (2)

Queen's Bench Division in 1956.¹ The borough of Lowestoft is an excepted district and acts as the divisional executive committee for that part of East Suffolk which lies within the borough. The senior classics master at Lowestoft Grammar School was elected to the town council which is required, under the scheme of administration, to confirm the appointment of assistant teachers in the school. It was maintained that such appointments were thereby in the gift of the Council and that a teacher was disqualified from service on the Council by the Local Government Act, 1933. The justices found the case proved and fined the teacher five pounds, also awarding ten guineas costs against him.

Giving judgement on appeal to the Queen's Bench Division, Lord Chief Justice Goddard said that the only point on which he disagreed with the justices was the amount of the fine. It would have been quite sufficient to fine the defendant one shilling. The office of teacher was at the disposal of the Lowestoft Town Council and until they confirmed the appointment it was not valid. Mr Justice Ashworth agreed with the Lord Chief Justice, but Mr Justice Stabile held that the mere fact that the Council had the right of veto did not place the office at the disposal of the Council. He would have allowed the appeal.

The disqualification of teachers for membership of the following bodies has been statutorily removed:²

- (a) any committee appointed for the purposes of the enactments relating to education,
- (b) any committee appointed for the care of the mentally defective,
- (c) any committee appointed under the Education Act, 1946 or under the Public Libraries (Amendment) Act, 1893, s. 4, for purposes connected with the Public Libraries Acts, 1892 to 1919,
- (d) as a representative of a local authority on a joint committee appointed by agreement between the local authority and other local authorities for these purposes,

¹ *Lamb v Jefferies* (1956) 1 QB 431
² Education Act, 1946, s. 10

(e) a committee appointed under the Children Act, 1948, s 39 (1) (outside London) or the Children's Committee appointed under the London Government Act, 1939, s 64 (in London) ¹

9 Religious Opinions

No teacher may be disqualified or dismissed from appointment, receive less emolument or be deprived of promotion, purely on the grounds of holding any particular religious opinions or because he attends (or fails to attend) any particular place of worship ²

This does not apply to the staffs of aided schools, nor to reserved teachers in controlled and special agreement schools, who are selected for their fitness to give denominational instruction

In spite of this clause it is still not unknown for teachers to be asked questions of this character at an interview. Whatever the candidate says, he is at a disadvantage. The safest course is to reply that the question is highly personal and, therefore, irrelevant. Strictly speaking, the managers or governors of a county school have no right to question a candidate on his religious beliefs, even when he has applied for appointment as a scripture specialist.

10 Accidents to Teaching Staff

In English law the relationship between master and servant does not involve a guarantee that the former will never expose his employees to danger or risk. In accepting employment the servant willingly undertakes the risks ordinarily involved in the work, and the employer is not required to indemnify him against these

The Workmen's Compensation Acts apply only to those earning less than £420 *per annum* and do not, therefore, cover teachers. Even where negligence is proved, there is no case against the

¹ This last disqualification was removed by the Education (Miscellaneous Provisions) Act 1953 s 13

² Education Act, 1944 s 30

employer if the servant continues in a place where he is aware of danger. In one case a man continued to work for a railway company for a fortnight after he learned that there was danger due to the negligence of the employer. His action failed.¹

In any case, the duties of a teacher are not always very clearly defined. He is expected to do whatever he considers to be necessary for the welfare of the pupils, and this will involve many things besides teaching. Indeed, the risk of accident is greater outside the normal work of the classroom. It is possible, for a small premium, to insure against injury and the teacher may well consider it wise to make this provision.

By the doctrine of common employment, an employer is not liable for injury to an employee through the negligence of a fellow servant unless he has retained the man in his employ, knowing him to be incompetent. Common employment does not necessarily require that the two servants should be engaged in the same occupation, a teacher and a schoolkeeper may be held to be in common employment. There is, however, a strong tendency for the courts to show a dislike of this doctrine, and a fairly close relationship must usually be established before such a plea is accepted.

The employer's duty is not clearly defined, but he is bound to use reasonable care to provide safe premises and appliances. The common law right to compensation requires proof of negligence, or continuation in common employment after proof of incompetence.

In county, controlled and special agreement schools, the local education authority is the employer of the teacher. In aided schools the teachers are appointed by the managers or governors and there is no privity of employment between the teacher and the authority. Teachers in an aided school have, therefore, no claim against the authority as employer since there is no relationship as between master and servant. The authority may, however, be liable in respect of failure to carry out repairs for which it is responsible or for dangerous apparatus which it has installed.

¹ *Woodley v Metropolitan District Railway Co* (1877) 2 Ex. D. 384

An employer is not liable if the defective nature of the apparatus is due to the negligence of a servant.

It is probable that the success of an action would not be prejudiced by the fact that the teacher was performing a voluntary duty at the time of an accident

11 Resignation

Notice of resignation should be served on the employer¹ in accordance with the terms of the agreement. Sometimes an employer will release a teacher if notice is not given by the specified date, but it should be remembered that this is an act of grace and not of right

12 Suspension of Teachers

The terms under which teachers may be suspended are contained in the rules of management or articles of government, and are usually set out fully in the agreement

A teacher has the right to be present, accompanied by a friend if he so desires, at any meeting of managers, governors or the local education authority at which his suspension or dismissal is considered.² He must be given seven days' clear notice of such meetings. In the case of dismissal following suspension, for misconduct or other urgent cause, the teacher is not entitled to the usual notice and salary is stopped from the date of suspension

Where, following suspension, a teacher is reinstated, arrears of salary accruing from the date of suspension to the date of reinstatement must be paid to the teacher

13 Dismissal

A teacher may be dismissed on the usual notice being given at

¹ The managers or governors in aided schools, the local education authority in others

² Schools Grant Regulations, 1951, Schedule II 7, and School Health Service and Handicapped Pupils Regulations, 1953, Schedule I 7

any time For misconduct or other urgent cause he may be dismissed on the terms laid down in his agreement

A dismissal may be challenged only on the grounds that it is *ultra vires* or in bad faith Lord Sumner stated that 'where discretion is given to a local authority, it is for the authority to exercise it, provided that it is not *ultra vires*, nor its power exercised corruptly or *mala fide* When the exercise of a discretion is challenged it is for the plaintiff to prove a duty in the courts to interfere'¹

A headmaster was given notice of dismissal by a local education authority following an action against him for excessive corporal punishment² The magistrates had held that the punishment was excessive, although there had been great provocation, and the headmaster was bound over under the Probation of Offenders Act His appeal to Quarter Sessions was allowed with costs His case against the Council was that, in view of the successful appeal, the dismissal was invalid and inoperative and he sought an injunction against the Council to prevent them from acting on the notice He also asked for costs The Corporation maintained that the dismissal was a valid and effective exercise of discretion and that there was no liability for restraint or damages

Giving judgement for the Corporation, Mr Justice Clauson said that the education committee considered whether the educational machine would not function more satisfactorily without the plaintiff There was a difference of opinion, which went against the headmaster There had been no suggestion of corruption and he could see no evidence of bad faith

It will be seen from this that a breach of the local education authority's discipline, which has not involved breaking the law, may be a valid ground for dismissal

It has been held that failure to comply with a requirement that a teacher should reside in a certain place is a good ground for dismissal³

Summary dismissal may take place for wilful disobedience of a

¹ *Roberts v Hopwood* (1925) AC 578

² *Gill v Leyton Corporation* (1933) *Education*, 14 April 1933

³ *Williams v Glamorgan CC* (1916) 14 LGR 741

lawful order, misconduct, incompetence, permanent disability or gross moral misbehaviour which is inconsistent with the fulfilment of the conditions of service. A member of a university staff took a student into a dark lecture room where he put his arm round her and kissed her. He was dismissed by the university authorities and subsequently brought an action against them.¹ Judgement, with costs, was given for the university.

In aided schools, where the managers or governors are the employers, there is a clause in the rules of management or the articles of government requiring them to dismiss teachers when directed to do so by the local education authority, and prohibiting the dismissal of teachers without the consent of the authority except in any cases where the managers or governors are expressly given this power.

In controlled and special agreement schools the dismissal of a teacher from being a reserved teacher does not preclude the teacher from being reappointed as a non reserved teacher in the same school.

14 Withdrawal of Recognition

If a teacher's appointment is terminated for grave professional default, misconduct or conviction of a criminal offence, the facts must be reported to the Minister. It is immaterial whether the teacher has resigned or been dismissed.²

If the Minister, after giving the teacher every chance of refuting the charges, declares him to be unsuitable for employment as a teacher on grounds of grave professional default, or misconduct, he shall not be so employed. This prohibition also extends to those similarly disqualified by the President of the Board of Education before 1 April 1945.³

¹ *Jones v University of London* (1922) *Times* 22 March 1922

² Schools Grant Regulations 1951 Schedule II 4 and School Health Service and Handicapped Pupils Regulations 1953 Schedule I 4

³ Schools Grant Regulations 1951 Schedule II 5 and School Health Service and Handicapped Pupils Regulations 1953 Schedule I 5

After giving the teacher every chance of making representations the Minister may, on educational or medical grounds, require that the employment of a teacher be terminated or made subject to such conditions or qualifications as he may impose ¹

¹ Schools Grant Regulations, 1951, Schedule II 6, and School Health Service and Handicapped Pupils Regulations, 1953, Schedule I 6

V

SALARIES AND INCOME TAX

I The Salary Committees

It is the duty of the Minister to secure the appointment of one or more committees to consider the remuneration of teachers, such committees to be representative both of the local authorities and of the teaching profession.¹ The committees must submit proposals for suitable salary scales to the Minister when they think fit, or when he so requires. After the scales have received his approval, the Minister makes an order binding them upon the local education authorities. The chairmen of the committees are appointed by the Minister.

The practice is for the salary committees to be equally representative of the authorities and the teachers. Each panel elects a leader who alone has the right of speech at meetings of the full committee, the other members being allowed to express their views in the meetings of their own panel. There is no constitutional provision for arbitration, but in 1954 the Minister approved the submission of the proposals to an independent tribunal when negotiations had reached an impasse.

When a review of salaries is projected, the Burnham Main Committee considers the salaries of teachers in primary and secondary schools. After these have been agreed, the committees dealing with other institutions meet to revise the scales for which they are responsible. These are to some extent geared to the main scales.

After both panels of a committee have agreed on a decision the scales are referred to the various bodies represented on the committee, and are then submitted to the Minister. His approval is

¹ Education Act, 1944 s. 89

given in a letter to the chairman of the committee and the scales are printed for the guidance of all concerned.

2 Duration of the Scales

The 1925 scales continued in operation, subject to war allowances, until 1945. New scales, each for a period of three years, were introduced in 1945, 1948, 1951 and 1954. The rapidly rising cost of living caused the Minister, early in 1956, to use his power under Section 89 of the 1944 Act to ask the committees to consider new scales to be introduced not later than 1 October 1956.

The resulting proposals made no reference to the time for which it was intended they should remain in force and, in a letter to Lord McNair, the chairman of the main committee, the Minister wrote

'Unlike previous recommendations of the Committee, the present ones make no reference to the period for which the new scales are intended to remain in force. I must make it clear that my approval will be given on the assumption that, unless there is some major change in circumstances, the new scales will continue in force for the normal three-year period of time.'

3 Primary and Secondary Schools

General Structure—The basic scale is a salary increasing by annual increments to a prescribed maximum. To this are added certain amounts in virtue either of the special qualifications or experience of an individual teacher, or of the special responsibility of a specific appointment. Additions in the former category are payable irrespective of the post in which the teacher is employed, those of the latter kind only so long as the teacher holds the post for which they are awarded. In view of the frequent changes it is not practicable to set out details of the scales in full, and the following notes merely indicate the principal provisions. For full particulars of the current salaries teachers should refer to the printed scales published by Her Majesty's Stationery Office, a list of which is given in Appendix II.¹

¹ See page 218

Equal Pay—Until 1954 the salaries of women teachers were somewhat lower than those of men. A scheme is now in operation by which the salaries of women are being raised to the men's level by seven annual stages so that equal pay will become fully operative on 1 April 1961. It is already within the competence of local education authorities to pay equal special allowances for responsibility to men and women and some have taken advantage of this opportunity. There is no scheme within the scale to provide family allowances for men or women with dependants. Teachers are, of course, eligible for allowances payable under the Family Allowances Acts, 1945 and 1952.

Approved Study and Training—Teachers who have completed more than the minimum two years of training by further full-time study or training receive an addition to the basic scale of not more than three increments, at the rate of one increment for each year of such training.

The Graduate Addition—Graduates of English, Scottish, Welsh or Irish universities, of St David's College, Lampeter (or of dominion, colonial or other universities if their standards approximate to those of an English university), are eligible for payment of the graduate addition. Many other qualifications, including the final examinations of many professional bodies, are also accepted for this purpose. A complete list is published in an appendix to the current report. Possession of the qualification is a sufficient ground for payment of the allowance, it is not necessary that the teacher should be engaged in teaching the subjects in which it was taken. A teacher may hold only one graduate allowance. Possession of an additional degree (unless it be a higher degree) does not entitle a teacher to a further increase in salary.

The Good Honours Addition—A further allowance is payable to the holder of a higher degree, or of a first degree in first or second class honours of one of the universities listed in the appendix to the report. Where a teacher holds an unclassified honours degree of a university in the United Kingdom of Great Britain and Northern Ireland or the Republic of Ireland, the employing authority may determine whether or not it should be deemed a good honours degree. Higher degrees recognized for this purpose

must have been obtained by examination, or by research work or some other post graduate achievement.

The 'London Area' Allowance—Teachers serving in the 'London area' receive a further allowance, which is increased after sixteen years' service (whether in the area or elsewhere) or on attaining the age of thirty-seven, whichever is the earlier. Teachers serving in schools outside the area are not entitled to the allowance, even though they may be employed by a 'London area' authority, but those who normally serve inside the area, and are temporarily employed by such an authority elsewhere, are entitled to receive the allowance. The 'London area' comprises (1957)

(a) *the City of London,*

(b) *the County of London, excluding the City of London,*

(c) *the County of Middlesex,*

(d) *in the County of Surrey* the county borough of Croydon, the boroughs of Barnes, Beddington and Wallington, Epsom and Ewell, Kingston, Malden and Coombe, Mitcham, Richmond, Surbiton, Sutton and Cheam, and Wimbledon, and the urban districts of Banstead, Carshalton, Coulsdon and Purley, Esher, and Merton and Morden,

(e) *in the County of Essex* the county boroughs of East Ham and West Ham, the boroughs of Barking, Chingford, Dagenham, Ilford, Leyton, Walthamstow, and Wanstead and Woodford, and the urban districts of Chigwell, and Waltham Holy Cross,

(f) *in the County of Kent* the boroughs of Beckenham, Bexley, Bromley, and Erith, and the urban districts of Chislehurst and Sidcup, Crayford, Orpington, and Penge,

(g) *in the County of Hertfordshire* the urban districts of Barnet, Bushey, Cheshunt, and East Barnet, the rural district of Elstree, the parish of Northaw in the rural district of Hatfield, and the parish of Aldenham in the rural district of Watford.

With the exception of the City of London, these are the areas included in the Metropolitan Police District as defined in the Police Act, 1946

Experience before Qualification—Subject to the limitations contained in the appropriate appendix to the report, certain additions may be made to the minimum of the scale. It should be noted that these merely affect the teacher's placing on the scale and are not continued through the maximum. Their effect is to secure that the teacher reaches the maximum earlier than he would purely in respect of service as a qualified teacher.

*Teachers qualified by Long Service*¹—Where such a teacher, at the date of qualification, has previous teaching service or gainful employment amounting to at least twenty-three years after attaining the age of eighteen, an addition is made for each period of three years in excess of twenty years' such service. This addition is not continued through the maximum of the scale.

Qualification after Twenty-one—Teachers who qualified after attaining the age of twenty-one (other than those dealt with in the immediately preceding and following paragraphs) qualify for an addition in respect of experience after the age of eighteen in teaching, industrial, professional, clerical, social or other gainful employment. No service regarded by the Minister as part of the qualification for the status of Qualified Teacher may be included under this head.

'Special Training'—For teachers qualified by 'special training',² the additions quoted under the last paragraph are payable with special provision for the waiting period between their application for admission to 'special training' and the date of their entry on the course.

Unqualified Teachers—Unqualified teachers receive salaries based on a lower scale than that for their qualified colleagues. Special scales also exist for temporary teachers.

Heads' Allowances—Heads receive the salary to which they are entitled as assistants with the addition of a Head Teacher's allowance. Superintendent teachers of nursery schools are classed as heads for this purpose. For the calculation of heads' salaries, schools are divided into a number of groups according to the size

¹ See page 49.

² Grant Regulations No. 7B, 1947 Regulation 6 (or the corresponding regulations in force from time to time).

There is a separate scale of allowances for the heads and deputy heads of special schools.

5 Other Educational Establishments

Separately negotiated salary scales are published in respect of

Technical Colleges

Farm Institutes

Training Colleges

Youth Service Organizers

Specialist Organizers

Educational Psychologists

General Inspectors and Organizers

6 Income Tax

There is not space, in a book of this scope, to deal with the various complexities of the income tax regulations. Small hand books which explain the current provisions are easily obtainable from any bookseller. Certain points, however, are of particular concern to teachers.

It should be noted that the rule which makes allowances for expenses 'necessarily and exclusively' incurred in following one's occupation is strictly interpreted and there are few claims open to teachers under this head. Books, for example, are not regarded as a necessary expense since they are supplied by the local education authority. A typewriter is likely to be regarded as neither necessarily nor exclusively obtained for the following of the profession of a teacher.

One claim which is normally accepted without difficulty is for the replacement of academic robes, though not for the original purchase. In such cases the claim is facilitated if accompanied by a receipt from the robemaker and a certificate from the head to the effect that members of the staff are expected to wear robes.

A point which affects the staffs of boarding schools is the taxation of residential emoluments. Liability for tax depends on the nature of the agreement between the teacher and the school authorities. If a specified sum is deducted from the teacher's

salary in respect of residence, tax is assessable on the whole salary including the residential deduction. If, on the other hand, the teacher is appointed at a certain salary 'together with residence in term time', tax is still assessed on the amount of the salary and residence becomes a tax-free emolument.

VI

LEAVE OF ABSENCE

1 Sickness

According to Halsbury's *Laws of England* a servant is entitled to his wages during temporary illness, provided that the contract of service remains in existence throughout that time and that he is ready and willing to carry out his duties save for the incapacity produced by the sickness. On the other hand, it has been held¹ that permanent illness is a good ground for the termination of the contract.

Sickness has been defined by Mr Justice McNaghten as 'any morbid condition, without paying any attention to the cause'² and therefore includes incapacity due to accident. It comprises not only the illness itself but also approaching illness and the subsequent convalescence, and was described by Mr Justice Channell as 'not a breach of contract but an act of God'³.

It should be noted that the contract of employment must subsist throughout the illness. A servant who is unable to commence fresh employment through illness is not entitled to salary from his new employer, even though he has left the employ of his former master.⁴

2 Sick Pay Regulations

Sick pay allowances are granted by local education authorities under schemes which have, in general, been agreed between them

¹ *Cuckson v Stones* (1858) 28 JP 25

² In *Maloney v St Helens Industrial Co-operative Society, Ltd* (1932), 49 TLR 22.

³ *Davies v Elbow Vale U.D.C.* (1911) 75 JP 533

⁴ *R v Wintersett* (1783) Cald MC. 298

and the teachers' professional associations. The schemes vary somewhat from authority to authority, but service in one area is recognized for the calculation of benefits on transfer to another in accordance, of course, with the scheme of the new authority.

When an illness extends over more than three working days, a medical certificate must be submitted to the authority, and further certificates must be sent at weekly intervals. Teachers in hospital are not generally required to forward a certificate weekly, but one should be sent on admission and discharge. A 'fit' certificate should be sent before returning to school.

3 Infectious Illness

All teachers who are in contact with infectious illness at home should notify the authority. As a rule they are not excluded from school except when the illness is of an exceptionally serious character such as small-pox or poliomyelitis.

When a teacher himself contracts an infectious illness which the authority's medical officer certifies to have been, in all probability, caught in school, full salary is allowed for the necessary absence and neither the time nor the sick pay is counted against the teacher's entitlement.

4 Accidents during Teaching Duty

If a teacher's absence is certified to be due to an accident arising out of, and in the course of, his duty, full pay is usually allowed for six months, after which the matter is reviewed and the authority's medical officer may recommend a further six months on half pay.

Payment of full salary is without any admission of the authority's liability under the Workmen's Compensation Acts or the National Insurance (Industrial Injuries) Act but, in the event of any liability existing, shall include any compensation due.

5 Accidents outside Teaching Duty

If a teacher's absence is due to the actionable negligence of a third

VI

LEAVE OF ABSENCE

1 Sickness

According to Halsbury's *Laws of England* a servant is entitled to his wages during temporary illness, provided that the contract of service remains in existence throughout that time and that he is ready and willing to carry out his duties save for the incapacity produced by the sickness. On the other hand, it has been held¹ that permanent illness is a good ground for the termination of the contract.

Sickness has been defined by Mr Justice McNaghten as 'any morbid condition, without paying any attention to the cause'² and therefore includes incapacity due to accident. It comprises not only the illness itself but also approaching illness and the subsequent convalescence, and was described by Mr Justice Channell as 'not a breach of contract but an act of God'.³

It should be noted that the contract of employment must subsist throughout the illness. A servant who is unable to commence fresh employment through illness is not entitled to salary from his new employer, even though he has left the employ of his former master.⁴

2 Sick Pay Regulations

Sick pay allowances are granted by local education authorities under schemes which have, in general, been agreed between them

¹ *Cuckson v Stones* (1858) 28 JP 25

² In *Maloney v St Helens Industrial Co-operative Society, Ltd.* (1932), 49 TLR 22.

³ *Davies v Ebbw Vale U.D.C.* (1911) 75 JP 533

⁴ *R. v Winterset* (1783) Cald M.C. 298

and the teachers' professional associations. The schemes vary somewhat from authority to authority, but service in one area is recognized for the calculation of benefits on transfer to another in accordance, of course, with the scheme of the new authority.

When an illness extends over more than three working days, a medical certificate must be submitted to the authority, and further certificates must be sent at weekly intervals. Teachers in hospital are not generally required to forward a certificate weekly, but one should be sent on admission and discharge. A 'fit' certificate should be sent before returning to school.

3 Infectious Illness

All teachers who are in contact with infectious illness at home should notify the authority. As a rule they are not excluded from school except when the illness is of an exceptionally serious character such as small-pox or poliomyelitis.

When a teacher himself contracts an infectious illness which the authority's medical officer certifies to have been, in all probability, caught in school, full salary is allowed for the necessary absence and neither the time nor the sick pay is counted against the teacher's entitlement.

4 Accidents during Teaching Duty

If a teacher's absence is certified to be due to an accident arising out of, and in the course of, his duty, full pay is usually allowed for six months, after which the matter is reviewed and the authority's medical officer may recommend a further six months on half pay.

Payment of full salary is without any admission of the authority's liability under the Workmen's Compensation Acts or the National Insurance (Industrial Injuries) Act but, in the event of any liability existing, shall include any compensation due.

5 Accidents outside Teaching Duty

If a teacher's absence is due to the actionable negligence of a third

party,¹ he should advise the authority accordingly. The authority may then claim a sum to the extent of the damages recovered, but not exceeding the allowances paid in respect of sick pay. If the claim be settled on a proportionate basis between the parties, the authority will determine the proportion to be refunded by the teacher.

In one case, a teacher was prevented from carrying out her duties following an accident when she was returning from her holidays. She claimed that she was entitled to her full salary for the three weeks that she was absent. The authority's case was that the sick pay regulations conferred eligibility, but not a right, to allowances as there was a clause which allowed the withholding of payments in a specific case. Judgement in the Bury County Court was given for the teacher.

6 Tuberculosis

Special arrangements are usually made for teachers who contract pulmonary tuberculosis and those who suspect that they have developed this illness should consult the authority immediately.

7 Confinement

Authorities vary widely in their provision. In any case the authority must be notified three or four months in advance of the expected confinement, and the teacher will be required to go on leave for a specified period before and after the birth. Some authorities grant half pay, some pay no salary at all during this leave.

8 Holidays

When a teacher is on sick leave at the end of term he will normally be paid at the rate to which he is entitled (full or reduced pay) for the whole of the holiday period. If, however, he obtains a certificate of fitness during the holiday, sick pay ends from the date

¹ This might cover a whole range of accidents including, for example, being knocked down by a careless motorist, illness arising from food poisoning which can be traced to actionable negligence, etc.

of that certificate and he is treated as having returned to service, provided that he is in school on the first day of term

9 Suspension of Sick Pay

Most authorities include in their schemes a provision that if sickness is due to the teacher's misconduct, failure to observe the conditions of the scheme or conduct prejudicial to recovery, benefits may be suspended. When this is done, the teacher is informed of the fact and may then make representations to the authority

10 Deductions from Sick Pay

No teacher, during sickness, may receive from public funds an amount in excess of his full salary. When a teacher is absent on full or half pay which, together with benefits receivable from other sources, would exceed full pay, deductions are made in respect of allowances to which the teacher is eligible under the following provisions

(a) Sickness benefit receivable under the National Insurance Act, 1946 or, in the case of married women teachers who elect to be exempted from liability to pay contributions under this Act, an amount equal to the sick pay receivable by women teachers who do so contribute,¹

(b) Injury benefit receivable under the National Insurance (Industrial Injuries) Act, 1946,

(c) Any sums received as a treatment allowance from the Ministry of Pensions and National Insurance

Since 1948 teachers have been required to contribute for benefits under the National Insurance Act and it should be particularly noted that the deductions from sick pay are made by the authority if the teacher is entitled to benefit, *whether he has claimed the benefit or not*. It is important, therefore, that claims to full entitlement, including any benefits payable in respect of dependants, should be submitted promptly. Otherwise the teacher may suffer loss of income

party,¹ he should advise the authority accordingly. The authority may then claim a sum to the extent of the damages recovered, but not exceeding the allowances paid in respect of sick pay. If the claim be settled on a proportionate basis between the parties, the authority will determine the proportion to be refunded by the teacher.

In one case, a teacher was prevented from carrying out her duties following an accident when she was returning from her holidays. She claimed that she was entitled to her full salary for the three weeks that she was absent. The authority's case was that the sick pay regulations conferred eligibility, but not a right, to allowances as there was a clause which allowed the withholding of payments in a specific case. Judgement in the Bury County Court was given for the teacher.

6 Tuberculosis

Special arrangements are usually made for teachers who contract pulmonary tuberculosis and those who suspect that they have developed this illness should consult the authority immediately.

7 Confinement

Authorities vary widely in their provision. In any case the authority must be notified three or four months in advance of the expected confinement, and the teacher will be required to go on leave for a specified period before and after the birth. Some authorities grant half pay, some pay no salary at all during this leave.

8 Holidays

When a teacher is on sick leave at the end of term he will normally be paid at the rate to which he is entitled (full or reduced pay) for the whole of the holiday period. If, however, he obtains a certificate of fitness during the holiday, sick pay ends from the date

¹ This might cover a whole range of accidents including, for example, being knocked down by a careless motorist, illness arising from food poisoning which can be traced to actionable negligence, etc.

of that certificate and he is treated as having returned to service, provided that he is in school on the first day of term

9 Suspension of Sick Pay

Most authorities include in their schemes a provision that if sickness is due to the teacher's misconduct, failure to observe the conditions of the scheme or conduct prejudicial to recovery, benefits may be suspended. When this is done, the teacher is informed of the fact and may then make representations to the authority

10 Deductions from Sick Pay

No teacher, during sickness, may receive from public funds an amount in excess of his full salary. When a teacher is absent on full or half pay which, together with benefits receivable from other sources, would exceed full pay, deductions are made in respect of allowances to which the teacher is eligible under the following provisions

(a) Sickness benefit receivable under the National Insurance Act, 1946 or, in the case of married women teachers who elect to be exempted from liability to pay contributions under this Act, an amount equal to the sick pay receivable by women teachers who do so contribute;²

(b) Injury benefit receivable under the National Insurance (Industrial Injuries) Act, 1946,

(c) Any sums received as a treatment allowance from the Ministry of Pensions and National Insurance

Since 1948 teachers have been required to contribute for benefits under the National Insurance Act and it should be particularly noted that the deductions from sick pay are made by the authority if the teacher is entitled to benefit, *whether he has claimed the benefit or not*. It is important, therefore, that claims to full entitlement, including any benefits payable in respect of dependants, should be submitted promptly. Otherwise the teacher may suffer loss of income

11 Saturdays and Sundays

Saturdays and Sundays falling within a period of sick leave normally count against the sick pay entitlement, unless they immediately precede or follow a period of leave. Exceptions may be made when a week-end comes in a period of unpaid leave of less than a week's duration.

12 Declaration as to National Insurance Entitlement

All teachers are required to notify the authority of their entitlement to benefit under the National Insurance Acts. Such entitlement is related to the number of dependants, of whom only one may be an adult.

Children who are under the age of fifteen are classed as child dependants if they live with the insured person and are mainly supported by him, or if he contributes not less than the amount of the benefit, together with any family allowance to which they are eligible, towards their support.

In the case of children receiving full-time education, or children who are apprentices, the age limit is raised up to (but not including) the eighteenth birthday. In the event of a child being mentally or physically too ill to attend school, the age limit is raised up to (but not including) the sixteenth birthday. A married woman, living with her husband, is not eligible to receive *sickness* benefit for a child dependant unless the husband is incapable of supporting himself. She may, however, be entitled to receive *industrial injury* benefit in respect of such dependants, and she should claim accordingly. The local education authority should be advised of the amount received as a result of any such claim.

Adult dependants include the following classes:

(a) a wife who is living with her husband, or to whose support he contributes an amount not less than the standard additional benefit, provided that, in either case, she is not earning more than £2 a week or in receipt of full National Insurance benefits based on her own contributions;

(b) a husband who is mentally or physically incapable of supporting himself, and who earns less than £3 a week;

15 First Appointments

Teachers leaving college become entitled to sickness benefit shortly after starting work, and should claim benefit immediately. The Ministry requires this evidence, even though benefit may not be immediately payable, in order to grant credits for contributions in respect of complete weeks of absence.

16 Leave for Reasons other than Personal Illness

Leave of absence may sometimes be granted for reasons other than the *personal illness of the teacher*. Except in grave emergencies, such leave should be requested in advance through the head of the school. The question of payment of salary is at the discretion of the authority and varies widely in practice.

It has been held in the courts that a dismissal is not valid if a teacher is absent for urgent cause without the permission of the authority but with the permission of the head.¹

Some of the grounds on which leave of absence is sometimes granted are noted below, but these must not be regarded as more than a general guide to the sort of application which may be considered by an authority. Because of the considerable differences in the practice of the local education authorities, only a general indication has been given as to whether salary is payable in any particular instance. For detailed information, the teacher must consult the rules of his own authority.

(a) *Serious illness of relative*—The usual degrees of relationship which are accepted are husband, wife, father, mother, child, brother, sister, a child of whom the teacher is guardian or, in exceptional circumstances, other persons. It is generally a condition that a doctor should certify that the illness involves serious domestic difficulties which require the teacher's presence.

(b) *Death and funeral of members of the family* in the categories listed above.

(c) *Weddings of relatives in the same degrees*.

(d) *Private or family business*—usually without pay.

¹ *Martin v Eccles Corporation* (1919) 1 Ch 387

(e) *Holiday with husband or wife*—This is primarily intended for cases where the teacher's spouse is serving in H M Forces or is compelled to take the main annual leave in term time. Such leave is normally without salary.

(f) *Blood transfusions*—Teachers may be allowed to act as donors provided that they keep themselves fit for normal duties.

(g) *Conferences* on purely educational matters to which the teacher is a delegate, or of which he is a permanent official.

(h) *Courses of training* approved by the authority. Some authorities will allow leave for the final months of study for a degree.

(i) *Examinations and private study*—Most authorities pay for leave for an examination which would improve the teacher's educational qualifications, but this is not universal, and one authority does not pay when the examination might lead to an increase in salary, e.g. a degree. Salary is not paid for private study at home without attendance at a recognized institution.

(j) *Honours, decorations and degrees*—Leave is usually granted for the ceremony of presentation to a teacher or the teacher's wife, child or ward.

(k) *Inquests, witness and jury service*—Leave is normally with pay but any fee received should be handed to the authority which will then refund out-of-pocket expenses which are not in excess of the fee.

(l) *Days of religious obligation*—Leave is usually granted with pay on condition that the teacher may be required to make up the time in another school on a day on which his own is closed.

(m) *Interviews for appointments*—Some authorities limit the number of days' paid leave which may be granted for this purpose in a year. In some cases salary is not paid when the post sought is outside the profession.

(n) *Public duties*—Special leave may be granted for teachers who are candidates at parliamentary or local elections, who are justices of the peace or who have other public duties, including attendance at national conferences of political parties, trade unions or Whitley conferences.

(o) *Sport and out-of-school activities*—Leave may be granted

to act in a responsible capacity at sports meetings, musical festivals, *etc.*, promoted by schools or associations of schools. Occasionally, leave may be granted to enable teachers to represent their country in international sports events or trials.

(p) *National service*—Members of the Territorial Army, the Auxiliary Air Force, the Officers' Training Corps, the Royal Naval Volunteer Reserve or the Air Training Corps may be allowed leave for annual training. Pay may be allowed for part of the absence on proof that the whole period of training has been completed.

(q) *Visits to other schools*—Leave for a limited number of days a year may be granted for purposes of observation.

VII

SUPERANNUATION

1 Contributions

Teachers in contributory service pay a contribution of six per cent of their salary during such service, and a further six per cent is paid by the employing authority. Contributions are not funded but are appropriated in aid of the vote of the Ministry of Education. An actuarial enquiry into the scheme is held every five years and, should this reveal a deficiency, supplementary contributions are payable by the employers.

No contributions are payable in respect of service exceeding forty five years' pensionable service, nor after the age of seventy.

In cases where a teacher's salary is reduced, he may opt to continue paying contributions on his previous higher rate of salary. Since allowances are based on the last three years' salary before the award of the benefits, such payment will safeguard the allowances to which the teacher would have been entitled if his salary had continued at that higher rate.

Contributions are deducted from salaries by the employer, who remits them to the Treasury.

2 Pensionable Service

Pensionable service is, in general, all full time service as a teacher in schools not conducted for private profit and, in certain cases, as an educational organizer or full time youth leader employed by a local education authority. Such service falls into three categories.

(a) *Recognized service* is full time service as a teacher, rendered between the ages of eighteen and sixty five, before

1 April 1926 in schools grant-aided by the Board of Education, in approved schools and certified institutions under the Mental Deficiency Act, 1913, or (except in the case of elementary and approved schools) schools which, although not grant-aided at the time of the service, became so before 1 April 1924,

(b) *Contributory service* is similar service since 31 March 1926 or, in the case of Poor Law schools, since 1 April 1920,

(c) *Approved service* is any other service which may be recognized by the Minister towards qualification for a pension, including certain civil service appointments, university posts, etc. Such service counts towards the necessary number of years for the award but is not, in itself, pensionable

3 Supplementary Service

Service as a supplementary teacher was not pensionable. In the case, however, of those in such employment on 1 April 1945 (or re-employed after that date) the following provisions have been made

(a) Teachers who, within a year of being employed as supplementary teachers, were not subject to the Local Government Superannuation Act, 1937, are automatically in contributory service. They may opt to count all, or part, of their previous service on payment of the appropriate contributions,

(b) Teachers who, within a year of being employed as supplementary teachers, were subject to the Local Government Superannuation Act, 1937, could remain in that scheme if they chose, or withdraw their contributions, with compound interest, and join the teachers' scheme with the option to count all, or part, of their previous service on payment of the appropriate contributions

4 Overseas Service

A teacher who has been in contributory service in this country may count a period of teaching overseas as pensionable service on payment of the appropriate contributions. Such service is normally limited to five years, but the period may be extended by the

Minister Teaching in schools maintained by other Commonwealth countries in Britain may be counted similarly

To facilitate the recruitment of staff to schools overseas in which it is desirable that British teachers should be employed, a similar provision can be made, even if there is not any previous service in this country. Such service will normally be allowed for a period of up to five years, provided that the teacher enters contributory service within a year of the end of overseas service. Contributions for the period spent abroad will, in the case of teachers with no previous contributory service, be based on the salary they would probably have received under the Burnham Scale if they had been teaching in this country

5 Service of Exceptional Value

Service which is deemed to be of exceptional value to the teacher, whether before or after entering contributory service, may be allowed for pensionable purposes on payment of the appropriate contributions. Early application should be made to the Minister for the recognition of such service. In the case of employment prior to any teaching service, the application should be made within six months of entering contributory service.

6 War Service

War service by a teacher who has left contributory service for this purpose is counted as contributory service. If the authority supplements the service pay or if the service pay is equal to, or higher than, the teacher's salary, normal contributions must be paid by both teacher and employer on the full teaching salary.

If the authority does not supplement the service pay, and the latter is less than the teaching salary, no contributions are payable and the service is treated as fully contributory.

In cases where a teacher in training, or a trained teacher who has not yet entered contributory service, undertakes war service, such service will be treated as contributory without payment of contributions unless the service pay equals or exceeds the amount he would have received as a teacher.

7 Absence on Sick Leave

Absence on sick leave is not treated as contributory service:

- (a) after continuous sick leave of more than twelve months;
- (b) after the issue of a medical certificate of permanent incapacity for further contributory service,
- (c) when on less than half-pay.

8 Re-employment after Retirement

A teacher returning to full-time employment may continue to receive so much of his pension as, together with his salary, will not cause him to receive more than his salary at the time of retirement.

Substantially the same provision is made for teachers who return to part-time employment, and the pension and the salary, taken together, must not exceed in any quarter the salary at the time of retirement. Otherwise the pension is reduced. Each teacher is given a 'pension quarter' which is based on his birthday.

Such teachers do not qualify for an increased pension or an additional lump sum unless the further service is full-time and of at least a year's duration. Where such service does not qualify, the contributions paid in respect of it will be returned to the teacher.

9 Application for Pension

Four months before retirement a teacher should write to The Ministry of Education (Pensions Branch), Honeypot Lane, Canons Park, Middlesex, asking for the appropriate forms of application for allowances. After completion they should be sent to the employing authority who will forward the application to the Ministry.

The Ministry will not notify an assessment of the allowances before the date of formal retirement, that is, the last day on which salary is paid or, if the teacher has already retired, his sixtieth birthday.

10 Qualification for Allowances

Retirement is optional at sixty and compulsory at seventy, unless the authority approves an extension beyond the latter age.

Allowances are based on the number of years of pensionable service, up to a maximum of forty-five, and on the teacher's average annual salary for the last three years before retirement. Teachers must qualify under one of the following heads, together with the attainment of the age of sixty

(a) Thirty years' service, of which not less than ten are recognized, contributory or approved. In the case of a woman, up to ten years' married, but not widowed, absence may be added to make up the qualifying period,

(b) Service amounting to not less than half the number of years between the date of certification and the attainment of the age of sixty-five in the case of teachers previously subject to the Elementary School Teachers (Superannuation) Act, 1898,

(c) Recognized, contributory or approved service for two-thirds of the period between first employment in such service and the age of sixty five, with a minimum of ten years

11 The Annual Allowance (Pension)

The annual allowance is a sum equal to one-eightieth of the average salary (for the last three years of service) for each year of pensionable service. This is subject to a limit of forty-five years, of which forty must have been service before the age of sixty

Teachers who are entitled to a modified pension under the National Insurance scheme receive a reduced pension to which they become entitled on reaching the age of sixty in the case of women, or sixty five for men. The amount of the reduction varies according to the amount of modified service, but the maximum is £67 15s a year and this applies only where a teacher has completed forty years' modified service

The pension is payable by draft which may be cashed at any bank, proof of life and identity being required when payment is due. Payment cannot be made by credit to the pensioner's account. Before the passage of the Teachers (Superannuation) Act, 1956, payment was made quarterly in arrear but the new Act provides that payments shall be at such intervals as may be determined by the Treasury. At present the teacher may choose to receive his pension either monthly or quarterly

Pensions are treated as earned income for tax purposes¹ and assessments in this connection are made by H M. Inspector of Taxes, Public Departments (3), Ty Glas Road, Llanishen, Cardiff, to whom all correspondence on the subject should be addressed

12 The Additional Allowance (Lump Sum)

The lump sum is equal to three-eightieths of the average annual salary (for the last three years of service) for each year of pensionable service. This is subject to a limit of forty-five years of which forty must have been served before the age of sixty.

In the case of teachers with pensionable service before 1 October 1956, the service rendered before that date is calculated at the rate of one-thirtieth for each year. The limitation requiring forty of the qualifying years to have been completed before the age of sixty does not apply, but the amount of the lump sum attributable to service before that age must not exceed one and a half times the average salary for the last three years of service.

The lump sum is payable on application to H M Paymaster General immediately after the notification of the award.

A teacher may, on applying for his award, surrender his lump sum for an actuarially equivalent increase in his pension.

13 Allocation of Part of Pension

On reaching the age of sixty, a teacher in good health may, subject to certain conditions, surrender part of his pension for actuarially equivalent benefits payable to his wife or other dependant. This may now be done without interrupting service by temporary retirement.²

14 Breakdown Allowance

A teacher with a minimum of ten years' pensionable service may, on the ground of ill-health, receive a breakdown pension. If the service amounts to less than twenty years, it is calculated as though twenty years had been completed provided that the

¹ Contributions made during service are exempted from tax.

² See *Explanatory Memorandum and Teachers Superannuation (Allocation of Pension) Rules, 1956 (Form 207 Pen)*, obtainable from the Ministry of Education (Pensions Branch).

teacher could, had he remained in pensionable service, have served for this length of time before reaching the age of sixty five. If he could not have done so, the pension is based upon the number of years which he could have completed before reaching that age.

If a teacher's health breaks down before the completion of ten years' service he is entitled, provided that three years have been completed, to a short service gratuity amounting to one twelfth of his average salary for each completed year of service.

15 Death Gratuity

Before retirement—When a teacher dies after completing at least five years of contributory service, a death gratuity amounting to not more than an average year's salary or the lump sum for which the teacher has qualified, whichever is the greater, will be paid to the teacher's legal representative, subject to such conditions as may be imposed by the Minister. This is conditional upon death taking place in contributory service or within twelve months of leaving such service. If the teacher has not qualified for a death gratuity, the contributions paid are returnable with compound interest at three per cent. Payments not exceeding £100 may be made without proof of probate or other title.

After retirement—When a teacher dies after retirement but before he has received a sum in allowances equal to the average annual salary for the last three years of service, the difference between the allowances paid and the average salary may be paid to his legal representative. Payments not exceeding £100 may be paid without proof of probate or other title.

16 Note on Will

Every teacher should attach to his will a note to his executors quoting his Ministry of Education reference number and instructing them to write, claiming any allowances payable at his death, to The Ministry of Education (Pensions Branch), Honeyport Lane, Canons Park, Middlesex.

17 Annuities

A teacher who, under the Elementary School Teachers (Superannuation) Act, 1898, paid contributions before 1 April 1919, is

WIDOWS, WIDOWERS, ORPHANS OR OTHER DEPENDANTS 93
entitled at the age of sixty five or, if he continues in employment after that age, on retirement, to an annuity in accordance with the Annuity Tables of March 1899

18 Widows, Widowers, Orphans or Other Dependants

Under the Teachers (Superannuation) Act, 1956, the Minister has power to make a Statutory Instrument providing rules for pensions for widows, widowers, orphans or other dependants of teachers. Such pensions will be met by a reduction of the lump sum or death gratuities payable to, or in respect of, teachers under the existing system. The rules so made are subject to annulment by Parliament.

19 Return of Contributions

Where a teacher fails to qualify for the payment of allowances before reaching the age of seventy, or ceases to be employed in pensionable service without having so qualified, all contributions paid will be returned with compound interest at the rate of three per cent. A similar provision exists for women who marry, provided that they cease to be employed in pensionable service within one year of marriage.

20 Effect of Dismissal

The Minister may refuse altogether, or grant at a reduced rate, any allowances when a teacher's service has ceased through grave misconduct. It would appear that in such cases the decision is at the Minister's discretion and it is immaterial whether the service has been concluded by dismissal or by resignation.

21 National Insurance

Since 1948 all teachers have been required to pay National Insurance contributions on the same terms as other employed persons. Qualification under the National Insurance Act, 1946, is additional to any benefits receivable under the Teachers (Superannuation) Acts except where teachers have entered service since the introduction of the National Insurance scheme or, in the case of existing teachers, they have opted for the modified scheme.

22 The Pensions (Increase) Acts

The first Pensions (Increase) Act was passed in 1944 and its provisions were intended to expire on 31 March 1947. Subsequent legislation has, however, extended and modified the provisions of the 1944 Act. Increases payable under the earlier Acts have been continued in addition to any awarded under the later laws. The 1956 Act removed the limitations on the size of the total income or of a pension. At the same time, pensioners without dependants became eligible for the same increase as a married pensioner.

The following increases are now payable

(a) *1944 Act, as amended by later legislation*—Increases are not payable under this Act for teachers who retired after 31 March 1951. Teachers who retired between 1 April 1946 and 31 March 1951 receive a proportionate increase depending on the number of years of service counting towards the average salary which were completed before 1 April 1946.

<i>Annual Pension</i>	<i>Rate or Amount of Increase</i>
Not exceeding £100	40%
£100-£133 6s 8d	£40
£133 6s 8d-£200	30%
Exceeding £200	£60

(b) *1952 Act, as amended by 1956 Act*

<i>Pension commencing</i>	<i>Amount of Increase</i>
Before 1 April 1948	£26
1 April 1948-31 March 1949	£21
1 April 1949-31 March 1950	£16
1 April 1950-31 March 1951	£11
1 April 1951-31 March 1952	£6
After 31 March 1952	Nil

(c) *1956 Act*—Increases are calculated on the basic pension, disregarding any increases under the earlier Acts. No increase is payable in respect of pensions based on an average salary of £1,500 or more during an averaging period beginning after 31 December 1946, or of less than £1,500 during an averaging

period beginning after 31 March 1951. Increases are subject to a maximum of £100.

<i>Date of Retirement</i>	<i>Rate of Increase</i>
Before 1 April 1952	10%
1 April 1952-30 September 1952	9%
1 October 1952-31 March 1953	8%
1 April 1953-30 September 1953	7%
1 October 1953-31 March 1954	6%
1 April 1954-30 September 1954	5%
1 October 1954-31 March 1955	4%
1 April 1955-30 September 1955	3%
1 October 1955-31 March 1956	2%

Notes on the Acts have been published by the Government.¹

¹ *Pensioner's Guide to the Pensions (Increase) Acts* (H.M.S.O.).

22 The Pensions (Increase) Acts

The first Pensions (Increase) Act was passed in 1944 and its provisions were intended to expire on 31 March 1947. Subsequent legislation has, however, extended and modified the provisions of the 1944 Act. Increases payable under the earlier Acts have been continued in addition to any awarded under the later laws. The 1956 Act removed the limitations on the size of the total income or of a pension. At the same time, pensioners without dependants became eligible for the same increase as a married pensioner.

The following increases are now payable

(a) *1944 Act, as amended by later legislation*—Increases are not payable under this Act for teachers who retired after 31 March 1951. Teachers who retired between 1 April 1946 and 31 March 1951 receive a proportionate increase depending on the number of years of service counting towards the average salary which were completed before 1 April 1946.

<i>Annual Pension</i>	<i>Rate or Amount of Increase</i>
Not exceeding £100	40%
£100–£133 6s 8d	£40
£133 6s 8d–£200	30%
Exceeding £200	£60

(b) *1952 Act, as amended by 1956 Act*

<i>Pension commencing</i>	<i>Amount of Increase</i>
Before 1 April 1948	£26
1 April 1948–31 March 1949	£21
1 April 1949–31 March 1950	£16
1 April 1950–31 March 1951	£11
1 April 1951–31 March 1952	£6
After 31 March 1952	Nil

(c) *1956 Act*—Increases are calculated on the basic pension, disregarding any increases under the earlier Acts. No increase is payable in respect of pensions based on an average salary of £1,500 or more during an averaging period beginning after 31 December 1946, or of less than £1,500 during an averaging

period beginning after 31 March 1951 Increases are subject to a maximum of £100

<i>Date of Retirement</i>	<i>Rate of Increase</i>
Before 1 April 1952	10%
1 April 1952-30 September 1952	9%
1 October 1952-31 March 1953	8%
1 April 1953-30 September 1953	7%
1 October 1953-31 March 1954	6%
1 April 1954-30 September 1954	5%
1 October 1954-31 March 1955	4%
1 April 1955-30 September 1955	3%
1 October 1955-31 March 1956	2%

Notes on the Acts have been published by the Government ¹

¹ *Pensioner's Guide to the Pensions (Increase) Acts* (H M S O)

Part Two

TEACHERS AND THEIR
EMPLOYMENT

VIII

ROUTINE ADMINISTRATION

1 Obligatory Records

Both the Ministry of Education and the local education authorities require certain records to be kept in schools. This chapter deals principally with those required by the Ministry, since the local authorities' forms differ widely. The keeping of such documents is an essential part of a teacher's work and it should be done with care. Some of the records, or certified extracts from them, are admissible as evidence in the courts and it is vital that they should be accurate. It is a serious reflection on a teacher when, for example, an attendance register for which he is responsible is kept with a degree of carelessness which he would not tolerate from his pupils.

The Ministry requires that in every grant aided school, or every department of such a school organized under a separate head, the following records should be kept by, or under the supervision of, the head ¹

- (a) an admission register,
- (b) attendance registers,
- (c) the school annals (formerly known as the log book or school record),
- (d) a punishment book in which all cases of corporal punishment must be recorded

Entries in these documents must be written in ink. They must be originals and not copies, and all alterations should be made so that both the original entry and the correction are clearly distinguishable.

¹ Administrative Memorandum No 531 (10 May 1956)

Admission and attendance registers must be preserved for at least three years from the date on which they were last used. The same requirement applies to the punishment book. The school annals should be preserved at least during the life of the school.

2 Admission of Pupils

The rules of management or articles of government normally provide that the admission of pupils is under the control of the managers or governors, subject to any general requirements of the Ministry or the local education authority

A pupil may not be refused admission to, or be excluded from, a school on other than reasonable grounds.¹ It has been held that it is not reasonable to refuse a child admission to a voluntary school merely because he does not belong to the religious persuasion providing the school. Other grounds which have been held to be unreasonable are that the child has previously been untaught, that he is shoeless and neglected, that he has been irregular in attendance or that his brothers and sisters do not attend the school.

Refusal to admit, or a decision to exclude, has been held to be reasonable if a child does not live in the area served by the school, if he has been persistently insubordinate after suffering the usual punishments, or if there has been a refusal to submit to a medical examination in connection with the cleansing of verminous children.

An admission register, which may be of loose-leaf or card index form, must be kept in which the name of every pupil is entered on the day he first attends the school. The details required are

- (a) the full name of the pupil,
- (b) sex,
- (c) the name and address of the parent,
- (d) the date of the pupil's birth,
- (e) the date of admission or re-admission
- (f) the name and address of the last school attended,

¹ Schools Grant Regulations, 1951, No. 13 (1) and School Health Service and Handicapped Pupils Regulations, 1953, No. 35

(g) in the case of schools taking boarders, a statement as to whether the pupil, if of compulsory school age, is a boarder or a day-pupil

A child whose name is entered in the admission register becomes a registered pupil of that school,¹ and his name must be deleted only when one of the grounds noted in the following section has become applicable ²

Children may be admitted only to schools for which they are qualified by age, ability and aptitude. A child of primary school age may not be admitted to a secondary school,³ and only those qualified by the selection procedure may be admitted to secondary grammar schools. Similarly, a child ascertained as educationally sub-normal must not be admitted to an ordinary school.

Children must not be admitted to nursery schools before they attain the age of two. In the case of nursery classes forming part of a larger school, the lower age limit is three. They must not be retained after the age of five. These limits may be varied if there are *exceptional circumstances* in the case of any pupil, and it is possible for a nursery school to be granted permission to keep children until they are seven ⁴

3 Removal from Roll

The name of a pupil must be removed from the roll of a school on any of the following grounds becoming applicable ⁵

If still of compulsory school age

(a) if the pupil is registered at the school through the requirements of a school attendance order, and the order is amended by the substitution of another school or revoked

¹ Education Act, 1944, s. 114 (1)

² Education (Miscellaneous Provisions) Act, 1948, s. 4 (6)

³ Except in certain cases between the ages of ten and a half and twelve

See page 28

⁴ Schools Grant Regulations, 1951, No. 13 (2)

⁵ Pupils' Registration Regulations, 1956, No. 4. It is important that the name should not be removed until there is evidence that one of the conditions has been fulfilled. When a pupil's name has been removed, he ceases to be a registered pupil of that school and, should the parent fail to cause him to be admitted to another school, the local education authority might be considerably embarrassed in proceedings for failure to attend school.

because arrangements have been made for the child to receive suitable education otherwise than by attendance at school,

(b) in any other case where the child has become a registered pupil of another school,

(c) in any case not falling within (a) above when the pupil has ceased to attend the school and the parent has satisfied the authority that he is receiving efficient full time education suitable to his age, ability and aptitude otherwise than by attendance at school,

(d) when, being a day-pupil, he has removed to a place from which the school cannot be reached with reasonable facility,

(e) when the pupil is certified by the school medical officer as unlikely to be fit to attend school before becoming exempt from the obligation to do so,

(f) when the pupil has been continuously absent for at least four weeks and reasonable enquiries have failed to elicit the cause of absence,

(g) when the pupil is known to have died,

(h) in the case of a boarder, or a pupil in a school not maintained by a local education authority, when the child has ceased to be a pupil of the school,

(i) when the pupil will cease to be of compulsory school age before the next meeting of the school and it is known that he intends to leave,¹

(j) when the pupil has been permanently excluded by the local education authority or by the managers or governors of a maintained school.²

If not of compulsory school age

(a) if the pupil has ceased to attend the school or, if a boarder, he has ceased to be a pupil of the school,

(b) when the pupil has been continuously absent for at least

¹ The names of these pupils should be removed on the last day of term—Administrative Memorandum No 531 (10 May 1956)

² If the Minister as the result of an appeal by the parent, determines that the child has been excluded unreasonably, the name must be restored to the roll.

four weeks and reasonable enquiries have failed to elicit the cause of absence,

(c) when the pupil is known to have died

When a pupil of compulsory school age, who is not the subject of a school attendance order, has become a registered pupil at a special school under arrangements made by a local education authority, his name must not be removed from the roll of that school without the consent of the authority or, if this be refused, without a direction by the Minister

4 Suspension and Expulsion of Pupils

The procedure to be followed is laid down in the rules of management or articles of government and in the regulations of the local education authority. Suspension is normally within the jurisdiction of the head and is usually the limit of his power, but there are still some schools where the head is authorized to expel. It cannot be too strongly urged that, even where this is so, it is always wiser to choose the less final course. Suspension gives the pupil and his parent the opportunity of a constitutional enquiry and there is, moreover, an administrative difficulty¹ connected with expulsion which might mean that the decision would have to be revoked, with consequent embarrassment to all concerned, except the pupil.

Even the right of suspension should be used with the greatest discretion, and only for serious and urgent cause. When a head has decided to pursue this course he should explain carefully to the pupil that he may not attend school again until the matter has been fully considered. The suspension should be communicated at once, in writing, to the parent and to the local education authority. In the case of voluntary schools the head should notify the correspondent or clerk whose duty it then becomes to inform the authority.

The parent must be given an opportunity of attending any meeting at which the suspension is to be considered. At this meeting, unless there are cogent reasons to the contrary, it should be decided, subject to any consents which may be necessary, either

¹ See page 104

to put a term to the suspension on such conditions as may seem desirable, or to confirm the suspension and expel the pupil

It is the duty of the head to tell the parents that they have a right to appeal. In the first instance they may address their appeal to the managers or governors and, if this prove unsuccessful, they may also state their case to the local education authority or, ultimately, to the Minister. If the child is expelled, they may request that he should continue as a pupil of the same school and should the Minister decide that the expulsion is unreasonable, the child must be readmitted by the school.¹ Herein lies the danger of expulsion from an administrative point of view. If the Minister's decision were to be against the managers or governors there would be considerable loss of face by all concerned, and the force of expulsion as an ultimate sanction would be lost.

When a pupil has been expelled from a particular school, the local education authority is not relieved of its duty to provide an education for the child suitable to its age, ability and aptitude. Normally, no proceedings for non-attendance can be taken in the courts in respect of any child who is suspended or who, being expelled, has not been admitted as a registered pupil at another school. Where, however, suspension is due to the parent's encouragement of his child's disregard of the school rules, an action against the parent may be successful, as was the case in *Spiers v. Warrington Corporation*.²

5 Infectious Illness

Pupils suffering from an infectious or contagious illness should be excluded from school in accordance with the regulations of the local education authority. Most authorities issue their own codes, but some general guidance is given in a pamphlet issued jointly by the Ministries of Health and Education.³ Unless the notification

¹ Pupils' Registration Regulations, 1956, No. 4 (x). The Minister might make such a decision if, for example, the parents stated that the school in question was the only voluntary school within reasonable distance to provide religious education in accordance with their own beliefs.

² See page 119.

³ *Memorandum on Closure of and Exclusion from School* (reprinted 1953).

comes from him, the school medical officer should be informed of the illness. If a case of an unusually serious nature, such as small-pox, diphtheria or poliomyelitis, occurs amongst the pupils of a school it is advisable to telephone the medical officer and ask for special instructions.

Children in contact with infectious illnesses at home are excluded in certain cases. Contacts should be carefully watched after their return to school, in case the disease develops at this later stage.

The school medical officer should be informed of verminous children in order that he may take the necessary steps for cleansing them.

The closure of schools during an epidemic is now rare. Children running about and playing together are as dangerous to each other as they are in school. Moreover, during such periods, teachers can watch for the appearance of symptoms and do much to prevent the spread of the epidemic by prompt action. Closure is a matter for the school medical officer and the advice of the Ministry in the pamphlet already mentioned is that 'it is only in special and quite exceptional circumstances necessary to close a school in the interests of public health'.¹

6 Records of Individual Development

The Ministry, in a circular² issued in 1947, has made suggestions for the keeping of records concerning the progress of individual children. Such records are still in the experimental stage and it is suggested that they should cover not only attainment but also such matters as aptitudes, special interests and disposition. These documents are of particular value when filling in employment records for school leavers, and writing testimonials and references for pupils who have left. Where local education authorities have abandoned the more formal examination for selecting pupils for different kinds of secondary education, the individual record plays an important part in selection. Care should be taken to ensure that the records are factual, and as objective as possible.

¹ *Memorandum on Closure of and Exclusion from School* (H M S O, reprinted 1953)

² *School Records of Individual Development* (Circular No 151, dated 18 July 1947)

7 Transfers

When a child ceases to attend a school and becomes a pupil at another school or place of education or training, other than one conducted for private profit, the educational and medical records concerning the child must be forwarded to the new school.¹ In this regulation the term 'school' includes a special school

8 Educational Year and Holidays

The educational year begins on 1 August and ends on 31 July.² The year is divided into not more than four terms³ during which the school must be open, except for unavoidable cause, for not fewer than forty weeks during which the school must meet on not less than two hundred days.⁴ In a school in which not fewer than fifty, or, alternatively, not less than half the total number, of the pupils are boarders, there may be a reduction of the number of weeks and days during which the school is required to meet.

Occasional closures, for half term or other purposes, during term may be granted in addition to the normal holidays so long as they are not inconsistent with the requirements of the preceding paragraph. These are at the disposal of the managers or governors. It should be noted that these holidays must be taken during the course of a term, and may not be added to the main holidays. Such occasional closures, to the extent of not more than ten days in the educational year, may be counted as days on which the school meets.⁵

9 School Sessions

A morning or afternoon session, or the attendance of a pupil thereat, comprises⁶

(a) *in a nursery school or class*—at least one and a half hours of suitable training and activities,

¹ Schools Grant Regulations, 1951, No. 7, and School Health Service and Handicapped Pupils Regulations, 1953, No. 41

² Schools Grant Regulations, 1951, No. 2 (a)

³ For terms in special schools, see page 111

⁴ Schools Grant Regulations, 1951, No. 15 (1)

⁵ Schools Grant Regulations, 1951, No. 16 (2)

⁶ Schools Grant Regulations, 1951, No. 14. For sessions in special schools, see page 111

(b) *in a school or class mainly for pupils under eight years of age*
—at least one and a half hours of secular instruction,

(c) *in a school or class mainly for pupils over eight years of age*
—at least two hours of secular instruction

The local education authority may approve a shorter morning or afternoon session on any day provided that the total of the two sessions is not less than twice the length of a single session as prescribed above

The time set aside for registration is excluded from these periods, but the necessary time for recreation and medical inspection may be so included

10 Time Table

There must be a time table for each school on which the following information is shown ¹

(a) the times of the beginning and end of the school session on any day,

(b) the place at which any religious instruction or religious observance is given regularly elsewhere than on the school premises

11 Size of Classes

Classrooms and other rooms used for instruction must not be overcrowded.² This regulation is made on hygienic grounds and may have the effect of requiring that, in a small room, one must not have a class of the maximum size allowed by the regulations on educational grounds

The number of pupils on the register of a class may not exceed the following maxima,³ with the proviso that the number may be exceeded so long as the Minister is satisfied that every effort is being made to comply with the regulation and that failure to do

¹ Schools Grant Regulations, 1951, No 8

² Schools Grant Regulations, 1951, No 17

³ Schools Grant Regulations, 1951, No 10 For the maximum size of classes in special schools, see page 111

so is beyond the control of the local education authority, the managers or the governors

(a) Pupils mainly below the age of three	15
(b) Pupils mainly between three and five	30
(c) Senior classes in a primary school	30
(d) Other classes in a primary school	40
(e) Classes in a secondary school	30

12 Temporary Closure of Schools

Her Majesty's Inspector must be given seven clear days' notice of the closure of a school or the suspension of its ordinary work for holidays or any other cause. If, in the case of an emergency, this notice cannot be given, the closure should be notified by telegram to ARISTIDES, AUDLEY, LONDON, whence the message will be transmitted to the Inspector concerned ¹

The purpose of this notification is twofold. It enables the Ministry to keep a check on the number of closures during the year, and it avoids fruitless visits by an inspector to a school which is closed.

13 School Annals

This record should be kept by or under the supervision of the head, and it forms a permanent record of events connected with the history of the school. The actual form is not prescribed, but the following matters are amongst those which should be included ²

(a) matters of significance such as changes in the character, organization or curriculum of the school, alterations to the premises, substantial changes in equipment, visits of managers or governors, the illness or absence of members of the staff;

(b) the receipt of any report on the school sent by the Ministry to the authority, or to the managers or governors, and any remarks made by the Ministry thereon;

(c) the receipt of any report made to the authority by the committees or officers, if so directed by the authority,

¹ Administrative Memorandum No. 531 (10 May 1956)

² Administrative Memorandum No. 531 (10 May 1956)

(d) the reasons for a temporary closure of the school, a substantial variation in the routine or a marked change in the average attendance.

14 Corporal Punishment

All cases of corporal punishment must be entered immediately in a book which is kept for this purpose. The head is alone responsible for its completeness and accuracy.¹

15 External Examinations

The following regulations² govern the entry of pupils in maintained schools for external examinations:

(a) No pupil below the age of sixteen on 1 September in the year in which the examination is held may be entered by a school for any external examination other than the General Certificate of Education,

(b) A pupil below the age of sixteen on 1 September in the year in which the examination is held may be entered for the General Certificate of Education if the head certifies that it is desirable on educational grounds that he should be entered, and that it is probable that he will pass in the subject or subjects for which he is entered;

(c) The examination fee will be remitted for candidates entered by schools in accordance with these conditions.

16 Handicapped Children

Pupils who are blind or deaf must, if a local education authority makes arrangements for their education at school, be educated in a special school unless the Minister otherwise approves. Those who are not blind or deaf may be educated in special or ordinary schools as may be appropriate to individual cases. The education of handicapped children in ordinary schools must be appropriate to their disabilities.³

¹ Administrative Memorandum No. 531 (10 May 1956)

² Schools Grant Amending Regulations No. 3, 1952

³ School Health Service and Handicapped Pupils Regulations, 1953, Nos. 15 and 16

The various categories of handicapped pupils are as follows ¹

(a) *Blind*—those with no sight or who are, or probably will become, so defective in vision that they require to be taught by methods not involving the use of sight,

(b) *Partially sighted*—those who cannot follow the normal school régime, but who can be educated by special methods involving sight,

(c) *Deaf*—those with so little hearing that they require to use methods appropriate for those without naturally acquired speech or language,

(d) *Partially deaf*—pupils with some naturally acquired speech or language but whose defective hearing requires special arrangements or facilities,

(e) *Educationally sub-normal*—those with limited ability or other retardation who require some specialized education wholly or partly in substitution for the normal education of ordinary schools,

(f) *Epileptic*—those who, because of this condition, cannot be educated under a normal régime without detriment to themselves or other pupils,

(g) *Maladjusted*—those with emotional instability or psychological disturbance which requires special treatment for their personal, social or educational readjustment,

(h) *Physically handicapped*—pupils not suffering solely from a defect of sight or hearing who cannot be educated under a normal régime because of disease or crippling defect,

(i) *Pupils suffering from speech defects* which, whilst not due to deafness, requires special treatment,

(j) *Delicate*—those who do not fall under any other category but who, because of their impaired physical condition, need a change of environment or who cannot, without risk, be educated in ordinary schools

17 Special Schools

It is the duty of local education authorities to maintain special

¹ School Health Service and Handicapped Pupils Regulations, 1953, No 14.

schools which are suited to the needs of children in the various handicapped categories and, in the nature of things, some of these are boarding schools whilst others cater merely for day pupils. The modified code for these schools is laid down in the School Health Service and Handicapped Pupils Regulations, 1953. Some of the principal provisions are noted below.

Staffing—The requirements of the Minister regarding the staff of special schools have already been discussed in Chapter III.¹

Terms—In the case of a boarding school the terms shall not be more than three in number, in a day school there may be four terms. Except for unavoidable cause they must amount to a period of not less than two hundred days. In exceptional circumstances the Minister may permit the number of terms to be increased.²

School Sessions—On each school day there must be two sessions amounting, in the aggregate, to not less than three hours: secular instruction in any school or class mainly for pupils under the age of eight, or four hours in any school or class for pupils mainly over that age. If the school meets on six days in the week, one day may consist of only one session, comprising half the period of secular instruction specified above. If exceptional circumstances justify the change, a school which would normally meet for two sessions may include all its secular instruction in a single session.³

Size of Classes—The number of pupils on the register of a class in a special school is limited to the following numbers:

(a) Pupils who are deaf, partially deaf or suffering from a speech defect	10
(b) Pupils who are blind, partially sighted or maladjusted	15
(c) Pupils who are educationally sub normal, epileptic or physically handicapped	20
(d) Pupils who are delicate	30

These numbers may be exceeded if the Minister is satisfied that every effort is being made to comply with the regulation and that failure to do so is beyond the control of the local education authority, or where compliance would interfere unduly with the

¹ See page 50

² Regulation 36

³ Regulation 36

efficiency of the school and the average number of all classes does not exceed the maximum.¹

Hospital Schools—The Minister may approve such modifications of the general scheme as he may deem necessary in the case of a school held in a hospital.²

Further Education—An establishment for the further education of the disabled must provide courses of vocational training suitable to the disability of the students, including their general education and appropriate physical education. Admission is normally limited to those over sixteen.³

18 Employment of Children

Under the Children and Young Persons Act, 1933, as amended by the Education Acts, 1944 to 1953, restrictions are placed upon the employment of children and young persons with a view to safeguarding the health and well being of those who have frequently proved a temptation to employers seeking cheap labour.⁴ The Acts give power to local authorities to make bye-laws on this subject. These vary widely from one authority to another and all that can be attempted here is to give a digest of the principal features of the law. Teachers will be well advised to study the bye-laws of their own local authority.

Age limit—Subject to the provisions of the Act and of any bye-laws made by the local authority, no child may be employed until he has attained the age which is two years below the upper limit of compulsory school age.⁵ This refers to the actual attainment of the age, and is not subject to the provisions for avoiding broken terms by which a child is presumed not to have reached the age when he may leave school until the end of the term in which he actually attains that age.

Time limit—On days on which he is required to attend school a

¹ Regulation 34.

² Regulation 43.

³ Regulation 55.

⁴ Children and Young Persons Act, 1933, ss. 18-30, as amended by the Education Act, 1944, s. 120 and Schedule VIII, Part I, and the Education (Miscellaneous Provisions) Act, 1948, s. 11 and Schedule 1, Part II.

⁵ At the moment this is thirteen, when the school leaving age is raised to sixteen the minimum age for employment will become fourteen.

child may not be employed before the end of school hours, nor for more than two hours. He may not be employed for more than two hours on a Sunday, or before six o'clock in the morning, or after eight o'clock at night on any day. The nature of the employment must be such that he is not required to lift, carry or move anything so heavy as to be likely to cause him injury.

The bye-laws of a local authority may reduce the age limit for children employed by their parents in light agricultural or horticultural work, and may permit employment for not more than one hour before the beginning of school hours. The bye-laws may also prohibit altogether the employment of children in certain occupations¹ and may prescribe restrictions regarding the actual periods of employment, periods of rest and holidays.

The bye-laws, which must be confirmed by the Secretary of State, may not prevent a child from taking part in an entertainment under a licence granted in pursuance of the Act.

Employment for the purpose of this Act means assistance in any trade or occupation carried on for profit, notwithstanding that the employe receives no reward for his labour. It does not include taking part in a religious service, or in a practice for a religious service.

Entertainments—In general, children are not allowed to take part in any entertainment for which a charge is made, whether for admission or not, to any member of the audience. A local authority may, however, grant a licence for such performances (in accordance with any conditions and restrictions which may be made by the Minister of Education) in the case of a child who has attained the age of twelve.

A licence is not necessary if the child has not, during the previous six months, taken part in entertainments on more than six

¹ Most authorities have a long list of prohibited occupations. The wide variations between them are due to the difficulty of securing unanimity on the question of what is harmful. It is reported that a conference of administrators was called, after the passage of the 1936 Act, to discuss occupations for which exemptions from school attendance could be granted after the age of fourteen. Every local education authority was represented and the conference ended with unanimity on one point only: all were agreed that employment as a lather boy should not qualify for exemption.

occasions when such a charge was made, and the net proceeds of the entertainment are devoted to some purpose other than the private profit of the promoter. This exception does not apply in premises licensed for the sale of intoxicating liquors unless they are also licensed for stage plays, or a special authority in writing has been granted by two justices or a metropolitan magistrate.

Dangerous Performances—No person under the age of sixteen may take part in any performance endangering his life or limb, nor may he be trained for such performances if under the age of twelve. Between the ages of twelve and sixteen a licence is necessary for such training.

Performances Abroad—No person under the age of eighteen may be taken abroad to sing, play or perform, or to be exhibited, for profit. Under certain conditions, a police magistrate¹ may grant a licence for this purpose in respect of a person who has attained the age of fourteen.

Street Trading by young persons below the age of eighteen is also controlled. This includes the hawking of newspapers, matches, flowers or any other articles, singing or performing for profit, shoeblackening and other similar occupations carried on in public places. A street includes any highway, public bridge, road, lane, footway, square, court, alley or passage, and a public place includes any public park, garden, sea-beach or railway station, and any place to which the public for the time being have, or are permitted to have, access, whether on payment or otherwise. Young persons below the age of sixteen are prohibited altogether from street trading, unless the bye-laws permit them to be employed by their parents. Children may not be so employed in any circumstances. *Enforcement* of the law relating to the employment of children and young persons is the duty of the local education authority,² but often the first notice which an authority has of a suspected

¹ A police magistrate is one of the following

(a) the chief magistrate of the metropolitan police courts,

(b) any magistrate of the metropolitan police court in Bow Street,

(c) any stipendiary magistrate appointed by Order in Council to exercise jurisdiction under this section (No Order in Council has been made for this purpose as yet)

² Education Act, 1944, s. 59

infringement comes from a school Teachers should therefore remember that, though they have no power to act directly in this matter, they can help by bringing apparent breaches of the law to the attention of the local education authority

Teachers can also help in cases where children who have a licence appear to be suffering as a result of their employment A report that a licensed child is lethargic in school will enable the authority to submit him to a further medical examination with a view to considering whether it would not be in the child's best interests to withdraw the licence, or to make it subject to certain conditions

IX

SCHOOL ATTENDANCE

1 Compulsory School Age

At present, a person who has attained the age of five years but has not attained the age of fifteen is deemed to be of compulsory school age.¹ As soon as he is satisfied that it is practicable to do so, the Minister must prepare an Order in Council prescribing that, from a given date, the upper limit is to be raised to sixteen years. The draft of such an Order must be laid before Parliament and will become effective if no objection is lodged within forty days.

For children receiving special educational treatment in a school provided for this purpose the upper limit is already sixteen.² If a child becomes a registered pupil of such a school under arrangements made by a local education authority, the authority must give its consent before the child can be withdrawn from the school. If the authority refuses, the parents may appeal to the Minister.

2 Attainment of Age

In English law a person attains a given age at the beginning of the day preceding the appropriate birthday. This matter was decided before the courts in a case concerning a will.³ Captain Shurey had been left some property which he was to inherit on attaining the age of twenty-five. On the day before his twenty-fifth birthday he died of wounds in France and the courts were asked to decide whether he had attained the age of twenty-five and so lived long enough to inherit the property. Mr Justice Sargant said, 'It has

¹ Education Act, 1944, s. 35

² Education Act, 1944, s. 38

³ *Re Shurey's Will* (1918) 1 Ch. 263

been adjudged that if one is born on 1 February at eleven o'clock at night and makes his will on the last day of January in the twenty-first year of his age, it is a good will for he is then of age. The law does not take cognizance of part of a day and the consequence is that a person attains the age of twenty-one or twenty-five, or any other age, on the day preceding the anniversary of his twenty-first, twenty-fifth or other birthday, as the case may be. I must declare that Captain Shurey attained the age of twenty-five on the day preceding the twenty-fifth anniversary of his birth¹

3 Avoidance of Broken Terms

When a pupil attains the upper limit of compulsory school age during the course of a term he is deemed, for the purpose of leaving school, not to attain that age until the end of the term¹. If, at the time of attaining that age, he is not a registered pupil of a school he will be deemed not to have attained school-leaving age until the end of the term at the school in which he was last a registered pupil, provided that he has been a pupil at any time during the year before he attained that age.

Similar provisions exist for young persons who attain the age of eighteen whilst subject to the requirements of a college attendance notice.

The effect of this section may be stated briefly. If a pupil reaches the age at which he may leave school during a given term, during the holiday which follows it, or on the first day of the next term, he may be reckoned as a leaver. This will include pupils whose birthdays fall on the second day of the following term as they will attain leaving age at midnight on the preceding day and will therefore have some nine hours' grace before the new term starts.

4 Presumption of Age

In court proceedings for failure to attend school a child is presumed to be of compulsory school age unless the parent proves the contrary².

¹ Education Act, 1946, s. 2

² Education (Miscellaneous Provisions) Act, 1948, s. 9

5 Duties of Parents

It is the duty of the parent¹ of every child of compulsory school age to cause him to receive efficient full time education suitable to his age, ability and aptitude, either by attendance at school, or otherwise.²

There is no obligation on a school to admit a pupil except at the beginning of term unless the child was unable to start then because he was ill, or there were circumstances beyond the parent's control, or the parent was then resident at a place from which the school could not be reached with reasonable facility. Where, under the provisions of this section of the amending Act,³ it is not practicable for a parent to arrange for his child to become a registered pupil at a school, he is relieved of his duty under Section 36 of the principal Act until such time as he can secure admission of the child.

If a child of compulsory school age, who is a registered pupil of a school, fails to attend regularly, the parent is guilty of an offence.⁴ The same section of the Act provides that the following grounds shall be a good defence in the case of day pupils when action is taken

(a) that the child was absent with the leave of any person authorized by the managers, governors or proprietor of the school,

(b) that he was prevented from attending by sickness or other unavoidable cause,⁵

(c) that the child was absent on a day exclusively set apart

¹ The term 'parent' includes a guardian and every person who has the actual custody of a child or young person—Education Act, 1944, s. 114 (5). Apparently, for this purpose, it may include the mother, even though the child is living with both parents.

² Education Act, 1944, s. 36.

³ Education (Miscellaneous Provisions) Act, 1948, s. 4 (2).

⁴ Education Act, 1944, s. 39.

⁵ The child himself must be sick. A mother kept her daughter at home because she was herself ill. The justices acquitted her of a charge under this section. On a case being stated for appeal, the matter was remitted to the magistrates with a direction to find it proved.—*Jenkins v Howells* (1949) 2 KB 218.

for religious observance by the persuasion to which the parent belongs,¹

(d) that the school is not within walking distance² of the child's home and the local education authority has failed to provide arrangements for transport, for admission to a school nearer home, or for admission to a boarding-school. This defence does not hold when a child is proved to have no fixed address, unless the nature of the parent's occupation requires him to travel from place to place and the child has attended a school of which he is a registered pupil as regularly as the parent's occupation permits. In the case of a child who has attained the age of six this exception is no defence, unless the parent proves that the child has made two hundred attendances during the twelve months prior to the commencement of proceedings.

Exclusion by the school may not necessarily be a defence. A mother persisted in sending her daughter to school wearing slacks, maintaining that the girl's health demanded this costume. The headmistress refused to admit the girl in this attire unless the mother produced a *medical certificate stating* that it was necessary. Although the girl had been excluded, the mother was guilty of an offence.³

It is held that a boarder has failed to attend school regularly if he has been absent during any part of a school term when he was not prevented from attending by reason of sickness or other unavoidable cause.

6 Attendance Registers

At one time a school's grant was based upon *regularity of attendance*, and the rules relating to the keeping of attendance registers

¹ See page 134.

² Two miles in the case of children under eight, three miles in all other cases, measured by the nearest available route—Education Act, 1944, s. 39 (5). In *Shaxted v Ward* (1954) 1 All E.R. 336 it was held that distance and not safety is the test to be applied in defining the nearest available route.

³ *Spiers v Warrington Corporation* (1954) 1 Q.B. 61.

were enforced with great care. Until 1956 the Minister laid down detailed regulations for this purpose, but the new rules give much more discretion to the local education authorities as to the way in which registers should be marked. The Minister's requirements¹ may be summarized as follows:

(a) there must be an attendance register for each class, form or group containing the names of all pupils in that class, form or group. The register must be marked at the beginning of each morning or afternoon session at which secular instruction is given.

(b) Any pupil who is out of class for medical or dental inspection or treatment (unless he is in hospital or receiving treatment at his home) must be marked present. It is immaterial whether the treatment is arranged through the School Health Service, the National Health Service, or privately.

(c) There must be a special register for secular instruction given elsewhere than on the school premises, but this requirement does not apply to classes forming an integral part of the school, even though they are in detached buildings or another school. If such classes are under the control of the head of the school to which the pupils belong, the attendances should be marked in the ordinary class register.

Apart from these requirements, the method of marking attendance registers is left to the discretion of the local education authority, whose regulations should be followed.

It is not necessary to record in an attendance register the presence or absence of any pupil who is a boarder in an independent school.²

Lest it should be thought that the fact that the Minister's less rigid requirements offer more scope for slackness in keeping registers, it should be stated that they are still important documents. They are open to inspection by Her Majesty's Inspectors, by persons authorized by the Minister under Section 77 (2) of the 1944 Act and by authorized officers of the local education

¹ Administrative Memorandum No. 531 (10 May 1956)

² Pupils' Registration Regulations 1956, No. 3 (4)

attendance of a pupil, the duty of enforcing attendance passes to the authority, which may institute proceedings against the parent. The courts may inflict a fine of one pound for a first offence, and five pounds in the case of a second offence. For subsequent offences the maximum penalty is a fine of ten pounds, or a month's imprisonment, or both.¹

In the case of a child who is a registered pupil under the requirements of a school attendance order, proceedings may be instituted by the authority which made the order. In other cases the proceedings are initiated by the authority in whose area the child resides, unless this authority is satisfied that action is being taken by the authority in which the child's school is situated.

If the child does not belong to the area of any local education authority, proceedings will be commenced by the authority for the school.²

Whether or not it convicts the parent, the court before whom the parent appears may direct that the child be brought before a juvenile court,³ which may make an order⁴ to secure the regular attendance of the child. Such orders are the same as may be made in respect of a child who is found to be in need of care or protection, *i.e.*, an approved school order, a fit person order, a recognizance by the parent or guardian, or a supervision order. If a supervision order is made, it may be linked with a fit person order or a requirement that the parent shall enter into a recognizance to exercise proper care and guardianship.

A child may be brought before a juvenile court by the local education authority without prejudice to the institution of proceedings against the parent.⁵ This is often done when it is felt

¹ Education Act, 1944, s. 40 (1), as amended by the Education (Miscellaneous Provisions) Act, 1948, s. 11 (1) and Schedule I, Part I.

² Education (Miscellaneous Provisions) Act, 1948, s. 11 (1) and Schedule I, Part I. See also the Education (Miscellaneous Provisions) Act, 1953, s. 11.

³ Education Act, 1944, s. 40 (3) and Education (Miscellaneous Provisions) Act, 1948, Schedule I, Part I.

⁴ Under the Children and Young Persons Act, 1933, s. 62. See also page 172.

⁵ Education (Miscellaneous Provisions) Act, 1953, s. 11.

that the parent is taking reasonable steps to ensure the child's regular attendance but, in spite of this, the child absents himself from school.

9 School Attendance Orders

When a parent is apparently failing to perform his duty to ensure that his child is receiving education as required by the Act, the local education authority may require him to show that he is, in fact, fulfilling that duty. The notice served by the authority must specify the time within which the parent must reply, and this must not be less than fourteen days.¹

If the parent then fails to satisfy the authority, the latter must serve a school attendance order in the prescribed form² requiring the parent to present the child for admission to the school named in the order. The parent must be given an opportunity of selecting a school but if, for good reason, the authority deems that the school chosen by the parent is unsuitable, it may appeal to the Minister to name a school. Whilst the order remains in force, the parent may request the authority to substitute another school or to revoke the order on the grounds that arrangements have been made to comply with the law otherwise than by attendance at school. This request must be complied with unless the authority is of the opinion that the change would be detrimental to the child's interests. In such cases an appeal lies to the Minister.

Failure to comply with the requirements of a school attendance order is an offence unless the child is receiving suitable full time education otherwise than by attendance at school.³ A court before whom a parent appears for failing to comply with an order may revoke the order, but this does not preclude the authority from taking further action.

School attendance orders remain in force until the child ceases

¹ Education Act, 1944 s. 37.

² School Attendance Order Regulations, 1944.

³ Apparently, however, an offence would be committed by sending the child to a school not named in the order, in spite of the fact that suitable full time education, otherwise than by attendance at school is a statutory defence.

that the parent is taking reasonable steps to ensure the child's regular attendance but, in spite of this, the child absents himself from school

9 School Attendance Orders

When a parent is apparently failing to perform his duty to ensure that his child is receiving education as required by the Act, the local education authority may require him to show that he is, in fact, fulfilling that duty. The notice served by the authority must specify the time within which the parent must reply, and this must not be less than fourteen days.¹

If the parent then fails to satisfy the authority, the latter must serve a school attendance order in the prescribed form² requiring the parent to present the child for admission to the school named in the order. The parent must be given an opportunity of selecting a school but if, for good reason, the authority deems that the school chosen by the parent is unsuitable, it may appeal to the Minister to name a school. Whilst the order remains in force, the parent may request the authority to substitute another school or to revoke the order on the grounds that arrangements have been made to comply with the law otherwise than by attendance at school. This request must be complied with unless the authority is of the opinion that the change would be detrimental to the child's interests. In such cases an appeal lies to the Minister.

Failure to comply with the requirements of a school attendance order is an offence unless the child is receiving suitable full time education otherwise than by attendance at school.³ A court before whom a parent appears for failing to comply with an order may revoke the order, but this does not preclude the authority from taking further action.

School attendance orders remain in force until the child ceases

¹ Education Act, 1944 s. 37.

² School Attendance Order Regulations, 1944.

³ Apparently, however, an offence would be committed by sending the child to a school not named in the order, in spite of the fact that suitable full time education, otherwise than by attendance at school is a statutory defence.

to be of compulsory school age, unless revoked by the local education authority or the courts

10 Further Education

A young person who is not exempted from compulsory attendance at a county college must comply with the requirements of any college attendance notice served upon him by the local education authority¹ In the event of failure to do so, he may be charged before the juvenile court, if under seventeen, or before the adult court if he is older

The Act provides that the following grounds shall provide a good defence

(a) that he was, at the material time, exempt from compulsory attendance,

(b) that he was prevented from attending by sickness or other urgent cause,

(c) that the requirement does not comply with the provisions of the Education Acts

The following persons are statutorily exempted from attendance for further education

(a) those so full time attendance at any school or educational institution other than a county college,

(b) those receiving suitable and efficient instruction, whether full time or not, for at least three hundred and thirty hours a year,

(c) those who, having been exempted under the preceding clauses, did not cease to be so exempt until they had attained the age of seventeen years and eight months,

(d) any person undergoing an approved course for the mercantile marine or the sea fishing industry or who, having completed such a course, is engaged in that industry,

(e) any person in the service of the Crown, persons of unsound mind and those detained by order of a court,

(f) any person who attained the age of fifteen before 1 April

¹ Education Act, 1944 s. 44

1945 and who was not, immediately before that date, required to attend a continuation school under the terms of the Education Act, 1921.

11 Documents receivable in Evidence

The following documents may be received in the courts and deemed to be correct in every detail without proof of the identity, signature or official capacity of the persons by whom they purport to have been signed, unless the contrary be proved ¹

(a) those issued by a local education authority and signed by an authorized officer;

(b) extracts from the minutes of the managers or governors of a school, signed by their chairman or clerk,

(c) certificates of attendance signed by the head of a school,

(d) certificates signed by a medical officer of a local education authority.

12 Premature Leavers

So long as the school-leaving age remains at fifteen, grammar schools are likely to continue to be troubled by the problem of premature leavers. The normal five-year grammar school course requires children to remain for at least a year beyond the upper limit of compulsory school age if the course is to be completed. In general, however, it is not possible to compel children to stay at school beyond the end of the term in which they attain the age of fifteen, even though the parents may have agreed to the completion of the course when the child entered the school. Consequently, in the *fifth forms of grammar schools* there is a leakage of children who leave prematurely, that is, before completing the Ordinary level of the General Certificate of Education. This is a serious moral issue in days when there is considerable competition for grammar school vacancies, as those children have occupied places which might have been filled by others who would have stayed the course.

¹ Education Act, 1944 s 95 (2)

Some authorities have secured a local Act of Parliament which enables them to take proceedings against the parents of premature leavers, but in the majority of places there is no legal redress against this nuisance

X

RELIGIOUS EDUCATION

1 Freedom of Conscience

In some countries, of which the United States of America is an example, the educational system is purely secular and no religious teaching is permitted in the state schools. This is not so in England where the Church was a pioneer in the field of education, and religious education is an essential part of the work of every school. In a country where there are to be found many non-Christian religions as well as many orders within the Christian faith, it is essential that the freedom of the individual conscience should be strictly safeguarded on lines such as those laid down in the 1944 Act.

The provisions of the Act are designed to protect both pupil and teacher. Although there must be religious education in all schools, no child may be taught any doctrine or practice which is repugnant to the wishes of his parent, even in a denominational school. Parents may, if they wish, withdraw their children wholly or partly from religious instruction.

Except in a limited number of cases,¹ a teacher's beliefs are his own concern and he cannot be dismissed, deprived of promotion or paid a lower salary because of his religious opinions. The conscience clauses of the Act are characteristic of the English attitude towards freedom of belief and must be strictly observed.

If the faith of a person involves limitations on food, these must be strictly observed.

¹ The exceptions are the staffs of aided schools and reserved teachers in controlled and special agreement schools.

2 History

The early schools in this country were chiefly church foundations and the state did not concern itself with education until the nineteenth century. Since that time there have been many struggles over religion in schools, opinions varying from belief in a fully Christian education at one extreme to a demand for a completely secular system at the other.

The compromise expressed in the 1944 Act seems to have brought a measure of peace, at least for a time.

The early elementary schools were established chiefly by two societies. The National Society for Promoting the Education of the Poor in the Principles of the Established Church throughout England and Wales was founded in 1811, and still plays an active part in Anglican education although with a less florid title—it is now generally known simply as 'The National Society'. Some schools and training colleges are still closely associated with it, it makes money available in the dioceses, it has a joint publishing committee with the S P C K., and it has established a register of teachers.

The British and Foreign School Society was founded about the same time by a Quaker, Joseph Lancaster, and is also in existence today. It provides schools and training colleges and administers a number of educational charities.

For some years the two societies worked on similar lines in establishing 'National' and 'British' schools, the former teaching according to the tenets of the Church of England, the latter being unsectarian but with a strong nonconformist bias. The first of the government grants for education were given to these two societies in 1833.

In 1870 school boards were set up to provide schools in areas not covered by the societies and the dual system of provided ('Board' or 'Council') and non-provided ('National' or 'British') schools came into being. With variations in nomenclature the dual system remains to this day, the present distinction being between 'county' and 'voluntary' schools.

3 The 1944 Act

The Act lays down that there must be religious education in all schools within the statutory system.¹ This is the only subject so specified by statute. Apparently, a head could dispense with English and Arithmetic in his school, so long as he could persuade Her Majesty's Inspectors that the children were receiving efficient full-time education suitable to their respective ages, abilities and aptitudes, but he cannot omit religious education from the timetable.

No local education authority may issue any instruction relating to secular education which would interfere with the provision of reasonable facilities for religious education during school hours, or with the opportunity of any pupil to receive religious education *unless an alternative time is provided*.²

4 The Daily Act of Worship

The school day must begin with a collective act of worship attended by all the pupils, subject of course to withdrawal on conscientious grounds, provided that there is suitable accommodation for assembling the whole school.³ In county schools the worship must be undenominational in character,⁴ the form to be used in voluntary schools is not stipulated in the Act, but it is generally held that, like denominational instruction in such schools, it may be in accordance with the trust deed or, where there is no such provision, in accordance with the practice in the school before it became a voluntary school.

The worship should take place on the school premises both in county and voluntary schools. The managers or governors of an aided or special agreement school may, on a special day, make arrangements for the worship to take place elsewhere, but this must be an exception and not the rule.⁵

When it is proposed to take the school to church, due notice

¹ Education Act, 1944, s. 25 (1)

² Education Act, 1944, s. 25 (6)

³ Education Act, 1944, s. 25 (1)

⁴ Education Act, 1944, s. 26

⁵ Education Act, 1946, s. 7

must be given to the parents so that they may, under the conscience clause, have an opportunity of requesting the withdrawal of their children from such worship. An announcement to the school, and a written notice on the school notice board would be sufficient. It is important that this should be done, as many parents who have no objection to their children attending religious instruction in school will prefer them not to attend church.

Occasionally clergy and ministers visit a school on special occasions, e.g. for Founder's Day or for leavers' services. On such occasions a similar opportunity for withdrawal should be given.

In voluntary schools the regular daily act of worship may be led by a clergyman or minister. If this is done in controlled schools the fact should be noted in the school annals.

5 The Agreed Syllabus

In county schools it has long been the law that religious education shall be 'without any catechism or formulary distinctive of any particular religious denomination'.¹ This is the famous Cowper-Temple clause named after Mr William Cowper-Temple who first introduced it as an amendment to the 1870 Act. It has been re-enacted in all succeeding legislation. The law officers of the Crown have decided that the ten commandments, the Lord's Prayer, and the Apostle's Creed are not distinctive and their use is not a violation of this clause. On the other hand, that section of the catechism known as the 'Duties' is distinctive in this sense, and may not be taught in county schools.

Soon after the first world war a number of local education authorities, of which Cambridgeshire became the best-known, produced syllabuses of religious instruction which had been agreed between representatives of the protestant denominations as suitable for use in county schools.

Each education authority must now adopt such a syllabus² in accordance with the decision of a conference representative of the religious denominations, the authority and the teachers' organiza-

¹ Education Act, 1944, s. 26

² Education Act, 1944, s. 29 (1) and Schedule V

tions. Such conferences were given power either to adopt a syllabus prepared by another authority, or to appoint a committee to draft a special syllabus for use in the authority's area.

Agreed syllabuses are drawn up in general terms, and the responsibility of adapting them to the needs of a particular school is left to the teachers. Her Majesty's Inspectors are required to ascertain that the religious education in county schools is in accordance with the syllabus adopted by the authority. Provision is also made for the reconsideration of the syllabus from time to time. An authority may appoint a standing advisory council on religious education to report to the authority on matters concerning the agreed syllabus, to recommend books and to sponsor courses.¹

In 1944 many fears were expressed about the effectiveness of agreed syllabus instruction, especially by those who thought that the Act weakened the whole position of Church schools. They felt that religious education was of little value unless it brought children into close contact with, and active membership of, the Church. Time has done much to allay these fears, for the religious education in county schools is frequently in the hands of sincere and capable teachers who, whilst honouring the limitations placed upon them by the Act, have gone far towards achieving the aim of religious education as defined by the Bishop of Bristol² whilst the 1944 Act was still in the making. He said, 'The aim of religious education is to give every child a chance to understand what the Christian faith is and what the Christian way of life in Christ involves so that, if he ultimately accepts or rejects it, he will at least know what it is that he is accepting or rejecting.'

6 Voluntary Schools

In aided schools, religious education is under the control of the managers or governors and must be in accordance with the provisions of the trust deed or, where there is no provision of this

¹ Education Act, 1944 s. 29.

² Dr F. A. Cockin, then Canon of St Paul's Cathedral, at a course for teachers organized by the Colchester Religion and Life Council, 4 and 5 March 1944.

must be given to the parents so that they may, under the conscience clause, have an opportunity of requesting the withdrawal of their children from such worship. An announcement to the school, and a written notice on the school notice board would be sufficient. It is important that this should be done, as many parents who have no objection to their children attending religious instruction in school will prefer them not to attend church.

Occasionally clergy and ministers visit a school on special occasions, *e.g.* for Founder's Day or for leavers' services. On such occasions a similar opportunity for withdrawal should be given.

In voluntary schools the regular daily act of worship may be led by a clergyman or minister. If this is done in controlled schools the fact should be noted in the school annals.

5 The Agreed Syllabns

In county schools it has long been the law that religious education shall be 'without any catechism or formulary distinctive of any particular religious denomination'.¹ This is the famous Cowper-Temple clause named after Mr William Cowper-Temple who first introduced it as an amendment to the 1870 Act. It has been re-enacted in all succeeding legislation. The law officers of the Crown have decided that the ten commandments, the Lord's Prayer, and the Apostle's Creed are not distinctive and their use is not a violation of this clause. On the other hand, that section of the catechism known as the 'Duties' is distinctive in this sense, and may not be taught in county schools.

Soon after the first world war a number of local education authorities, of which Cambridgeshire became the best known, produced syllabuses of religious instruction which had been agreed between representatives of the protestant denominations as suitable for use in county schools.

Each education authority must now adopt such a syllabus² in accordance with the decision of a conference representative of the religious denominations, the authority and the teachers' organiza-

¹ Education Act, 1944, s. 26

² Education Act, 1944, s. 29 (1) and Schedule V

tions. Such conferences were given power either to adopt a syllabus prepared by another authority, or to appoint a committee to draft a special syllabus for use in the authority's area.

Agreed syllabuses are drawn up in general terms, and the responsibility of adapting them to the needs of a particular school *is left to the teachers*. *Her Majesty's Inspectors* are required to ascertain that the religious education in county schools is in accordance with the syllabus adopted by the authority. Provision is also made for the reconsideration of the syllabus from time to time. An authority may appoint a standing advisory council on religious education to report to the authority on matters concerning the agreed syllabus, to recommend books and to sponsor courses.¹

In 1944 many fears were expressed about the effectiveness of agreed syllabus instruction, especially by those who thought that the Act weakened the whole position of Church schools. They felt that religious education was of little value unless it brought children into close contact with, and active membership of, the Church. Time has done much to allay these fears, for the religious education in county schools is frequently in the hands of sincere and capable teachers who, whilst honouring the limitations placed upon them by the Act, have gone far towards achieving the aim of religious education as defined by the Bishop of Bristol² whilst the 1944 Act was still in the making. He said, 'The aim of religious education is to give every child a chance to understand what the Christian faith is and what the Christian way of life in Christ involves so that, if he ultimately accepts or rejects it, he will at least know what it is that he is accepting or rejecting.'

6 Voluntary Schools

In aided schools, religious education is under the control of the managers or governors and must be in accordance with the provisions of the trust deed or, where there is no provision of this

¹ Education Act, 1944, s. 29

² Dr F. A. Cockin, then Canon of St Paul's Cathedral, at a course for teachers organized by the Colchester Religion and Life Council, 4 and 5 March 1944

nature in the deed, in accordance with the practice in the school before it became a voluntary school. The position in special agreement schools is precisely the same. In both kinds of school agreed syllabus instruction must be provided for the children whose parents request it and who cannot conveniently be educated elsewhere. If the managers or governors fail to make such arrangements, the local education authority must do so.¹

In controlled schools the agreed syllabus must be used, but the school may, at the request of parents, give further teaching for not more than two periods a week on denominational lines. Such additional teaching may be given by clergy or ministers.²

In voluntary schools, regular religious instruction may be given elsewhere than on the premises. The fact must be entered on the time table, opportunity for withdrawal given, and care exercised to see that the children return to school in time to be able to complete the minimum period of secular instruction required by the Schools Grant Regulations. It should be particularly noted that this applies to regular instruction, and not to the regular daily act of worship. The latter should normally be held on the school premises.

A proportion of the staff of controlled and special agreement schools may be appointed as reserved teachers, especially qualified for their ability to give trust-deed religious instruction.³

7 Inspection

Her Majesty's Inspectors and the inspectorate of a local education authority may inspect and report upon all religious instruction, whether in county or voluntary schools, where such instruction is given in accordance with an agreed syllabus. They may also inspect the undenominational form of worship in county schools. In aided or special agreement schools, the function of the inspector would be limited to the agreed syllabus instruction provided for the children whose parents request it. Although many such schools use parts of an agreed syllabus for their normal

¹ Education Act 1944 § 28

² See page 58

³ Education Act, 1944 § 27

religious instruction, such portions are really taken over and incorporated in the syllabus approved by the managers or governors

In voluntary schools, denominational instruction may be inspected, on not more than two days a year, by the managers or governors or by inspectors acting on their behalf. Fourteen days' notice of such visits must be given to the local education authority so that arrangements can be made to see that the authority's officials do not visit the school on such days. No child whose parents have withdrawn him from denominational instruction can be compelled to attend school on the day of such an inspection.

In controlled schools the agreed syllabus instruction would be inspected by the secular, the denominational instruction by the denominational inspector.

8 Time Table

The requirement that religious instruction should be given only at the beginning or end of the school day no longer applies, and the abolition of this rule has opened the door to specialization in religious education. If children are withdrawn, however, for denominational instruction elsewhere than on the school premises, this must be done at the beginning or end of a session.

9 Withdrawal from Religious Instruction

A parent may withdraw his child from any part of the religious instruction or worship of the school or from the whole of it.¹ This is the conscience clause, and once such a request has been made it must be strictly honoured unless and until it is withdrawn. It is desirable that such a request should be in writing but it is probable that an oral intimation is legally sufficient.

When a child cannot with convenience be educated in a school providing such instruction, he may be withdrawn by the parent for religious instruction in accordance with the parent's wishes. A pupil in a county school may thus be withdrawn for denominational instruction, or a pupil in a voluntary school for instruction

¹ Education Act 1944 s. 25 (3)

of a denominational kind which is not provided by that school. Adequate arrangements must be made for the withdrawal instruction, which must be given at the beginning or end of a session. It need not coincide with the provision for religious instruction in the time table.

If a county secondary school is so situated that arrangements cannot conveniently be made for withdrawal, the authority may provide facilities in the school for such instruction if it is satisfied that the parents desire such instruction to be given, and that adequate arrangements have been made. No cost for this provision may fall on the authority.¹

10 Days of Obligation

Parents may withdraw their children from attendance at school for all or part of a day which it is the practice of their religious persuasion to set apart exclusively for religious observance,² e.g. Ascension Day (for Anglicans and Roman Catholics) or the Day of Atonement (for Jews). It is not certain how many such days are recognized by the Church of England, an Act of 5 & 6 Edward VI mentions seventy nine, including Sundays, which are 'separated from profane uses'.

It was decided in the 'Darfield Case'³ that a parent still has this right, even though the child does not attend any form of worship on that day. To avoid misunderstanding, it is desirable that the parent should give notice to the head, and some religious bodies provide printed forms for this purpose.⁴

¹ Education Act, 1944, ss. 25 (5) and 26.

² Education Act 1944 s. 39 (2) (b).

³ *Marshall v. Graham; Bell v. Graham* (1907) 2 K.B. 112.

⁴ One such form reads as follows:

To the Head Teacher
Dear Sir or Madam

School

I am writing to give notice that as next Thursday is Ascension Day—a day set apart for religious observance by the Church of England, of which I am a member—I shall not be sending my children to school on that day.

Parent
Address

Teachers may also withdraw their services on such days. It is usual for leave to be granted with pay, subject to the right of the authority to use the teacher in another school on an equivalent number of days when his own is closed.

11 The Jewish Sabbath

The Jewish Sabbath begins at sunset on Friday, and Jewish children attending a school which does not cater exclusively for that faith should be allowed to leave school in time to reach home before sunset on Fridays during the winter. Some authorities issue a list of the times at which Jews may be allowed to go home on different Fridays during the shorter days.

12 Staffing

The question of reserved teachers, and the safeguarding clause dealing with the religious opinions of teachers, have already been noticed.¹

Clergy and regular ministers of any religious denomination are ineligible for appointment to the staffs of maintained schools except as occasional teachers, unless there are special circumstances.² Those who were employed immediately before 1 April 1945, and who continue on the staff of the same school, are exempted from the prohibition. It is also permissible to make fresh appointments in schools of a kind in which it was not forbidden to appoint an ordained minister before the passage of the 1944 Act. This includes secondary grammar schools and some others. In other cases the appointing body may make a special application to the Minister in a particular case, and his approval will be determined by the circumstances. The ban does not apply to those who have resigned their orders or ceased to be ministers.

The regulations seem clear on this point, but a case which occurred in Wales³ shows that misunderstandings may easily arise. A Congregational minister, Dr Hugh, was appointed to the

¹ See pages 58 and 61 for these items respectively.

² Schools Grant Regulations, 1951, No. 19.

³ Reported in the *Times Educational Supplement*, 2 June 1954.

staff of Gowerton Grammar School and had subsequently to withdraw from the post. The clerk to the governors had demanded a certificate to show that Dr Hugh was 'no longer an ordained minister'. He had already supplied a statement that he would cease to be the minister of his church from the date of the appointment. The nature of the Congregational order is such that there is no central authority and that once he had ceased to be the regular minister of a church he would, in effect, have resigned from the ministry. The statement which Dr Hugh had supplied was, in the circumstances, all that was possible, but it was not accepted. The matter was raised in Parliament and the Parliamentary Secretary to the Minister regretted that there had been an appearance of injustice.

13 Visits of Clergy to Schools

Clergy and ministers sometimes visit schools as speakers when, for example, pupils' conferences are organized through the medium of the Student Christian Movement in Schools or similar bodies. Though these lie outside the normal religious education of the school it is as well to make the denominational allegiance of the speaker known beforehand. Attendance at such meetings must be purely voluntary.

14 Boarders

Parents of pupils who are boarders may request that their children attend worship conforming to the tenets of the religious body to which they belong.¹ Similarly they may request that their children receive denominational instruction out of school hours. Such requests must be complied with, but no expense in this connection can be met by the local education authority.

These facilities may be provided on the school premises so long as they do not entail the meeting of any expense in connection with them set from public funds.²

¹ Education Act, 1944 s. 25 (7)

² Education Grant Regulations 1951 No. 46 (3)

¹ Educ.
² School

15 Special Schools

Provision must be made for every pupil to attend religious worship and receive religious instruction in accordance with the wishes of his parent. No pupil may be required to attend such worship, or receive such instruction, contrary to the wishes of his parent. These regulations apply both to boarders and day-pupils in special schools ¹

¹ School Health Service and Handicapped Pupils Regulations, 1953, Nos. 24 and 40

XI

ACCIDENTS AND NEGLIGENCE

1 The Duty of a Schoolmaster

Many school accidents occur during the course of a year and most of them have no repercussions, but sometimes parents consider that the school authorities have been negligent in some way, and an action is brought in the courts. It is therefore vitally important that teachers should understand their responsibilities, and that they should take all reasonable steps to prevent their pupils from coming to harm.

The courts have always taken a realistic view of these cases and have recognized that it is quite impossible, even if it were desirable, to watch every child during every minute of the school day. On the other hand, they expect that teachers should exercise supervision strictly enough to prevent unnecessary accidents. Mr Justice McNair, for instance, said,¹ 'A balance must be struck between the meticulous supervision of children every moment at school and the desirable object of encouraging sturdy independence as they grow up.'²

In this case, a child of five had climbed on to the glass roof of a lavatory after his class had been dismissed at four o'clock. He fell through and received injuries from which he died. The child's father maintained that an adult should have been present until the children had left the premises. The judge continued, 'In the case of children under five attending the nursery department of this school it was thought right to have some person in actual

¹ *Jeffery v London County Council* (1954) 119 JP 43

² The danger of crushing initiative and independence was also noted by Mr Justice Vaisey in another case when he said, 'It is better that a boy should break his neck than that you should break his spirit.'

supervision of them until they were collected by their mothers. That was not thought necessary in the case of the five-year-olds and that was a decision taken by a responsible person. I should require strong evidence to convince me that it is wrong.' The case was dismissed.

Towards the end of the nineteenth century Mr Justice Cave defined a schoolmaster's duty in the following words¹ 'The schoolmaster is bound to take such care of his boys as a careful father would take of his boys.' This definition was quoted by Lord Esher, then Master of the Rolls, who added that there could not be a better definition of a schoolmaster. Mr Justice Cave's statement is still accepted by the courts as a definition of a teacher's duty and is frequently cited in cases where teachers are accused of neglect.

Proceedings may be brought against the managers or governors, against the local education authority, or against teachers acting as their servants. Only one sum, however, may be awarded in damages. Where, in an action against a teacher, the employer is made a joint defendant, the court may find against both and, under the Law Reform Act, 1935, apportion the amount of damages to be paid by each. In general, the employer would be liable for accidents arising from defective premises or equipment unless the accident is directly caused by the negligence of the servant.²

2 Negligence

Circumstances vary so widely that it is impossible to secure a definition of negligence which will cover every possible situation. The court considers what is reasonable in the case before it, and decides accordingly. No superior knowledge or skill is required of the defendant unless he has failed in a duty of which he may be

¹ In *Williams v Eady* (1893) 9 TLR 637, 10 TLR 41.

² It is in a teacher's own interest to report immediately any defect in buildings or equipment which may give rise to an accident and, pending action by the responsible authority, to take reasonable steps to prevent any use which might lead to a mishap. Failure to take these steps might raise the question of the teacher's negligence.

presumed to have special knowledge.¹ There can be no successful claim arising from an accident to a child unless negligence be proved.

If an action for negligence is to succeed, three factors must be present. In the first place, the defendant must have owed a duty of care to the plaintiff. Secondly, he must have failed, either by what he has done or by what he has left undone, to perform that duty. Finally, the plaintiff must have suffered damage through that act or omission. These tests are applied by the courts in all cases where negligence is alleged.

Special circumstances may put a plaintiff outside the duty of a defendant's care. Such a case might occur when a boy is compelled to play games which, because of a hidden physical defect, cause him harm. If the defect were known to the teacher he would, of course, be required to exercise a sufficient degree of care to prevent injury to the pupil.

Much publicity is often given to cases where there is an allegation of negligence towards children and a good deal of sympathy—sometimes false sympathy—is aroused thereby. Mr Justice Hilbery referred to this whilst summing up in an action resulting from an accident in which a small boy lost an eye whilst a patient in a convalescent home.² He said, 'Our law reports show how fatally attractive children's cases have been to those who have to try them. Judges are human beings and their feelings are easily aroused in favour of the child, especially children of tender years. When they meet with an accident, any court is liable to strain the law in favour of the child, but an infant plaintiff has exactly the same burden of proving his case as any other plaintiff.'

Lord Atkin once summed up the question of negligence in words which echo the parable of the Good Samaritan.³ He said,

¹ When an accident occurs to a child whilst he is under school discipline the court would take into account the fact that a teacher may be presumed to have a special knowledge of children and their behaviour, and to act accordingly. The effect of this consideration would depend on the facts of a particular case.

² *Marston v St George's Hospital, Hyde Park Corner* (1956), *Daily Mail*, 1 May 1956.

³ In *Danoghue v Stevenson* (1932) AC 562.

'You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then, in law, is my neighbour? The answer seems to be, persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.'

3 Contributory Negligence

One defence to an action for negligence is that the plaintiff himself contributed to the damage he sustained. In such a case the question of duty does not arise if it can be proved that the plaintiff acted without due care. The courts, however, take into account the fact that children are reckless and that it is to be expected that teachers will know this. The standard of care demanded from teachers is therefore that of the person with skilled knowledge.

On this point, Beven¹ says

'The duty of the adult is so to conduct his affairs that he is not negligent. Children of very tender years are not to have negligence imputed to them . . . In intercourse with them adults are to use a greater than ordinary care because of their greater volatility and the infirmity of their judgement. To be free from liability where young children are concerned, adults must show that they have not failed to attain the standard of duty the circumstances demand.'

In 1841, some boys clambered on to an unattended cart and another moved it away by leading the horse. As a result, one boy fell and injured his leg. Had he been an adult, his action in climbing on the cart would probably have been held to have contributed to his injury, and would have invalidated his case. As the plaintiff was an infant, however, the case² was decided differently and the court accepted the submission of Serjeant Shee that it is impossible to say what is want of ordinary caution in a child seven years old.

¹ Beven *Negligence in Law* (4th edition, 1928), p. 182.

² *Lynch v Nurdin* (1841) 1 QB 29.

4 Higher Duty of Care

A defendant who, through training or experience, may have grounds to visualize more clearly the results of his acts in a particular sphere than would be expected of the proverbial man in the street, owes what is known as a higher duty of care. Obviously a doctor would be expected to render first-aid more effectively than a person who is completely untrained, and it has been noted above that teachers are expected to know more of the vagaries of children than most people do.

A case which contained this element¹ arose out of an accident which occurred when a chemistry master sent two boys across a school cloister with a bottle of sulphuric acid. Contrary to the school rules, some other pupils were playing cap touch in the vicinity and there was a collision. One of the boys was injured and actions were brought against the headmaster and the chemistry master. The case against the latter rested on the fact that he owed a higher duty of care since, as a chemist, he should have foreseen the possible results of sending pupils with a dangerous liquid in a fragile vessel.

5 Scope of Employment

An employer is liable for the acts of his servants only so long as they are acting within the scope of their employment. It is difficult to say where the scope of a teacher's employment begins and ends today, for there is a multitude of out-of-school activities which would once have been considered beyond his province. It is clear that the scope of employment is not to be construed in any narrow sense. An unauthorized teacher inflicting corporal punishment in defiance of the local education authority's rules would obviously be acting outside the scope of his employment and would have to take full personal responsibility for any mischance arising therefrom. The same would apply in the case of a teacher who sent a child across the road on a purely personal errand.

Some years ago, a teacher sent a fourteen-year-old girl to the staffroom to poke the fire and draw the damper. Whilst she was

¹ *Baxter v Barker* (1903), *Times*, 24 April 1903

doing this her pinafore caught fire and she was burned. An action¹ was brought against both the teacher and the local education authority. The judge held that the order was given by the teacher for her personal convenience, that she was therefore acting outside the scope of her employment, and the authority had no liability in the matter. He dismissed the authority from the suit, and awarded three hundred pounds damages against the teacher.

Two appeals followed. That by the teacher against the parents failed, but the latter appealed successfully against the dismissal of the authority from the case. Lord Justice Fawcett held that the teacher was acting within the scope of her employment, and said, 'In my opinion the Education Acts are designed to provide for education in its truest and widest sense. Such education includes the inculcation of habits of order, obedience and courtesy, such habits are taught by giving orders and, if such orders are reasonable and proper under the circumstances of the case, they are within the scope of the teacher's authority even though they are not confined to bidding the child to read or write, to sit down or to stand up in school, or the like. It would be extravagant to say that a teacher has no business to ask a child to perform small acts of courtesy for herself or for others, such as to fetch her pocket handkerchief from upstairs, to open a door for a visitor, or the like.

'It is said that these are for the teacher's own benefit, but I do not agree. Not only is it good for the child to be taught to be unselfish and obliging, but the opportunity of running upstairs may often avoid punishment. The wise teacher who sees a child becoming fidgety may well make the excuse of an errand for herself an outlet for the child's exuberance of spirits very much to the benefit of the child. Teachers must use their common sense, and it would be disastrous to hold that they can do nothing but teach.'

6 General and Approved Practice

A common defence to an action for negligence is that the act causing harm was in accordance with general and approved

¹ *Smith v Martin and Kingston upon Hull Corporation* (1911) 2 KB 775

practice in the circumstances. A selection of examples will show how this defence has been used in cases arising from accidents in school.

In the first,¹ some children were playing when one fell on the lance of a toy soldier with which another was amusing himself. The lance pierced the child's eye. It was held in this case that children are commonly allowed to play with these toys, and it cannot therefore be considered negligent for them to be permitted to do so in school.

In another case² the plaintiff was a girl of seven who was injured in an exercise which consisted of running across the floor and jumping over an inverted waste-paper basket. The head, an assistant and a student were present. An action for damages was based on the grounds that the basket was an unsuitable obstacle, the child was not physically fitted for the exercise, no landing mat was provided and there was no stand-by. In the defence, which was based on a plea of general and approved practice, it was pointed out that the Board of Education's suggestions included running and jumping for children of this age, that the head had been at the school for two and a half years during which the exercise had been performed regularly without accident, and that there had been no accident arising from this exercise at the head's previous school. Moreover, it was contended that the rope which the plaintiff suggested as a more suitable obstacle was, in fact, more dangerous. The suit was dismissed.

During the slump in the early 'thirties an unemployed lad of seventeen was ordered to attend a juvenile instruction centre, as a condition of receiving unemployment benefit. Whilst engaged in physical training at the centre, he fell and injured his arm during a game of *Horses and Riders*. He sued the local education authority³ and was awarded a thousand pounds in damages in the county court. This decision was reversed by the divisional court, whereupon Jones took the case to the Court of Appeal. Giving judgement for the Council, Lord Justice Scrutton asked whether

¹ *Chilvers v London County Council* (1916) 80 JP 246

² Reported in the *School Government Chronicle*, 19 February 1925

³ *Jones and another v London County Council* (1932) 30 LGR 455, C A

it could be negligence to play a game which had been played for twenty years. He added that there were few physical exercises without the possibility of an accident.

7 The Effect of Age

It has already been mentioned that what amounts to negligence in one case may not be so in another because the age of the plaintiff must be taken into account. This may be further illustrated by a case¹ arising from an accident to a lad of nineteen who was using an unguarded circular saw. It was alleged that the education authority was negligent in failing to provide a guard. In an appeal from the decision of the county court, it was said that the plaintiff knew the use of the saw, and voluntarily took the risk. Observing that there was no evidence of a general practice to protect saws, Mr Justice Lush added, 'If he had been a child, the case might have been different but, so far from being a child, he was a lad of nineteen years of age and had been in the habit of using the saw for two years.'

8 Warning of Danger

A teacher who can prove that he has warned a pupil of the dangerous consequences which may follow from a particular act is in a much stronger position when sued for negligence. A teacher told an eleven-year-old girl to take a pair of pincers from a drawer to remove a broken, rusty nib from a penholder. The nib broke and the child's eye was damaged by splinters. A case² was brought, claiming damages for personal injuries resulting from the negligence of the teacher, it being claimed that such an order should not have been given to a child. Directing the jury, Mr Justice Avory said that it was not contended that the pincers were dangerous, and the case rested on a direct order to take the pincers from the drawer without any warning of the possible danger. Even at arm's length, the accident might have happened. The jury awarded one hundred pounds and special damages.

¹ *Smerkitch v Newport Corporation* (1912) 76 JP 454

² *Foster v London County Council* (1927), *Times Educational Supplement*, 10 December 1927

It will be noted that the judge stressed the fact that the girl was not warned of the danger. A similar case failed because the mistress had frequently warned the children of danger.

9 Science Laboratories

Special dangers exist in science rooms because of the nature of the materials employed. So far as the law is concerned, the tests applied by the courts are the same. The important point to watch is that all reasonable care is used by teachers in charge of such subjects, and similar care should be taken by teachers in charge of handicraft rooms where edged tools are used.

10 Physical Education

Gymnasias and playing fields are, perhaps, the most common scenes of school accidents and there have been many cases arising from such mishaps. So far as the gymnasium is concerned, authorities are careful to prohibit the use of apparatus, as far as possible, by those who are not qualified. Disregard of such a requirement may place the teacher, and the head if he has knowledge of the infraction, outside the scope of his employment. The tests which are most likely to be applied by the courts will concern the adequacy of supervision, and the following of general and approved practice. In games periods it is important that the rules of the game be adhered to strictly, and dangerous play penalized.

A case¹ followed an accident when a boy fell whilst jumping from an agility stool in 1951. The boy was then aged five and it was claimed that he was required to jump from a stool which was almost his own height, the nearest adult being twelve to fourteen feet away. For the defence it was said that there was no permanent damage to the boy's elbow, and the headmistress maintained that the whole point of the apparatus was to give the children confidence. Mr Justice Devlin said that the apparatus itself, and the way in which it was designed to be used, were safe. It was clear

¹ *Webb v Essex County Council* (1954), *Times Educational Supplement*, 12 November 1954.

that the headmistress was not negligent, neither was the teacher, and he did not see what they could have done if they had seen the boy jump. There was nothing to show that it was anything but an accident.

11 The Straying Child

The House of Lords gave judgement, in 1955, in a case which had been before the Cardiff Assizes and the Court of Appeal.¹ In all three courts the decision was for the plaintiff who was awarded more than three thousand pounds damages in respect of the death of her husband.²

The accident occurred in 1951, when the plaintiff's husband was driving a lorry along a road leading past one of the Council's schools. A four-year-old pupil ran in front of the lorry, which swerved into a telegraph pole to avoid him. The driver was killed. His widow alleged that the child would not have been in the road if the children had been properly supervised.

It was the habit of the teacher-in-charge of the school to take two nursery children for a walk and, on the day in question, she had prepared them for this. She left them in a classroom whilst she went to the lavatory but her absence was protracted by the fact that on the way back she met an injured child and stopped to dress his wound. In all, she was away for about ten minutes, during which time the children disappeared.

The youngsters made their way to the road, and the accident occurred when one of them tried to cross it in the path of the oncoming lorry.

In the House of Lords, Lord Chief Justice Goddard said that the question of general importance was whether the occupiers of premises adjoining the highway had a duty to prevent young

¹ *Lewis v Carmarthenshire County Council* (1955) 2 All E.R. 1403, C.A.

² The reason for taking the case to the House of Lords was the dissatisfaction of the National Union of Teachers with the imputation of negligence which the Assizes and the Court of Appeal had sustained against the teacher. It is a good example of the extent to which a professional association is prepared to go in vindicating one of its members. The whole of the teacher's legal costs were borne by the Union.

children from escaping so as to endanger other persons lawfully passing upon it. By young children, he meant those whom a prudent parent would not allow to go into a street unaccompanied. He could not hold that an inference of negligence on the teacher's part should be sustained, but that did not conclude the matter. If it was possible for children of that age, when a teacher's back might be turned for a moment, to go out into a busy street, that did seem to indicate some lack of care or precautions that might reasonably be required. No satisfactory explanation had been given. The appeal was dismissed.

The interesting feature of this case is that both the Assizes and the Court of Appeal held that the teacher had been negligent. The House of Lords fixed the responsibility on the local education authority, maintaining that the gates must either have been open, or so easy to open, that a child of three or four could escape.

12 Criminal Negligence

The cases which have been considered are civil matters where an action has been brought by a person who has suffered damage and seeks redress for himself. These are cases of the kind most likely to affect teachers. If, however, it is maintained that conduct has been so reckless as to amount to a crime, the action would be brought before the criminal courts. It is necessary to prove a much greater degree of negligence to establish criminal liability.

Few teachers are likely to act so recklessly, but it is possible to imagine a hypothetical case which might be held to constitute a crime. A teacher brings a party of junior children to London for the day from the heart of the country. On arrival, he tells them to amuse themselves until six o'clock, and goes off alone to watch a test match. During the afternoon one of his pupils is knocked down and killed. It is probable that in such circumstances—admittedly so extreme that it is difficult to imagine any teacher being so rash—a criminal charge might be brought.

Failure to observe the law relating to the risk of burning may

well result in a criminal action. The section¹ is worth quoting in full

If any person who has attained the age of sixteen years, having the custody, charge or care of any child under the age of twelve years, allows the child to be in any room containing an open fire grate or any heating appliance liable to cause injury to a person by contact therewith, not sufficiently protected to guard against the risk of his being burnt or scalded without taking reasonable precautions against that risk, and by reason thereof the child is killed or suffers serious injury, he shall on summary conviction be liable to a fine not exceeding ten pounds,

Provided that neither this section, nor any proceedings taken thereunder, shall affect any liability of any such person to be proceeded against by indictment for any indictable offence

The warning of the last paragraph is perfectly plain. If a child is killed in this way, the law may hold the negligence to be gross enough to sustain a charge of manslaughter

13 Accidents away from School

Between School and Home—When a pupil meets with an accident on his way to or from school there is no liability on the part either of the teacher or of the authority

Visits to Clinics, etc—If a child visits a clinic on his way to or from school at either end of a session there is no liability on the school authorities. If a child is sent from school during the course of a session, the teacher should make arrangements for an escort, if he considers it necessary, having regard to the age of the pupil and the nature of the route. The position is similar with regard to visits to practical subjects centres

Errands—Children should not be sent away from the school premises on personal errands for teachers. A teacher who takes this responsibility is acting outside the scope of his employment

¹ Children and Young Persons Act 1933 s 11

and would probably be liable personally in the event of an accident.

Games and Educational Visits—The teacher in charge is *in loco parentis* and this responsibility continues even though the normal school time has ended. The Wembley case¹ occurred during the dinner-hour. Sometimes teachers who take children on visits which extend beyond the normal school hours dismiss the pupils from the place visited. Probably this would not render the teacher liable for negligence in the case of older pupils who might reasonably be expected to reach home safely, but much depends on the facts of the case. There is no doubt that the safer course is to return to school, or to a nearby point, with the children.

School Journeys—Teachers in charge are *in loco parentis* twenty-four hours a day and seven days a week.²

14 Commencement of Proceedings

Proceedings against a public authority for alleged neglect or default in the execution of a duty must be commenced within one year of the neglect or default complained of or, in the case of a continuing act, within one year of the cessation thereof.³ The courts have held that this applies to proceedings brought by infants as well as to those brought by adults.⁴

An action against a private individual must be brought within six years.⁵

15 When an Accident Occurs

Circumstances vary greatly and it is impossible to give advice except in very general terms, but it is as well to remember that not only may emergencies be caused through negligence, but also that it is possible to be negligent in the treatment of such situations.

¹ See page 177

² See also page 179

³ Public Authorities Protection Act, 1893, s. 1, and Limitation Act, 1939, s. 21

⁴ *Shaw and others v London County Council and another* (1934) 1 KB 67

⁵ Limitation Act, 1939, s. 2

The teacher's first duty is to the children in his charge. If there is still danger to pupils who are uninjured, as when dangerous gas is escaping in a laboratory, they must be removed from the possibility of harm at once.

Suitable action must be taken in the case of children who are hurt. First-aid should be rendered, remembering that it is *first* aid and that detailed treatment in a serious case is a matter for the doctor. Whenever it appears prudent to do so, a doctor must be called and, if necessary, an ambulance summoned. If the child's own doctor attends, the local education authority will not pay a fee in respect of the visit, in any case, the teacher calling the doctor should state that he is acting as the agent of the child's parents and that he is not personally responsible for the payment of fees.

A teacher should use his own judgement as to the need for summoning further assistance. If possible, another teacher should be asked to look after the children who are not hurt, and the head should be notified at once.

Unless the incident is manifestly trivial—and a teacher should err on the side of caution—the first opportunity should be taken of notifying the child's parents. If the child is removed to hospital, or has to be taken home or to a doctor, he should be accompanied by a teacher who will remain until a parent arrives or the doctor says that the child may go home. This may sound over-meticulous but, should there be a charge of negligence later, evidence of attention to detail of this kind would greatly strengthen the teacher's case. Even more important, in a border-line case where a parent is perhaps likely to sue, a teacher is more likely to gain his good-will and so, possibly, avoid action altogether if the parent is assured that everything possible is being done for his child.

The local education authority will require a report on the accident which will be passed to their solicitor so that he is briefed should action be contemplated at a later date. The head should also be fully acquainted with the facts, and a note made of any details for future reference. Memories are often short.

In the event of a complaint by a parent about an accident, the teacher should take care not to admit liability in any way. The

safest course is to express regret, and to say that the accident occurred whilst the teacher was acting in accordance with general and approved practice. If there is the slightest suggestion of legal action, the teacher should notify his professional association at once, giving a full and frank account of the facts, so that arrangements can be made for legal representation. Should the local education authority suggest any disciplinary action against the teacher, a similar precaution should be taken.

16 Accidents to Visitors

The duty of care owed to a visitor depends upon the relationship between the guest and the occupier of the property.

Invitees are those who go to the premises of another to pursue some common material interest. The occupier's duty is to prevent danger which may cause the invitee harm, or to warn him of its existence.

Licensees are those permitted by the occupier to enter his premises but who are not there for some material interest. A guest paying a social call is in this category. In this case, the occupier's duty is to warn the visitor of any danger of which he may be aware.

Trespassers are those who enter the property of another with no legal right or justification. They have no redress for any damage they may suffer from the defective state of the premises, but the occupier must not create a new danger whilst they are there, neither may he deliberately harm them.

In the event of a visitor suffering damage through the defective state of a school or its equipment, the local education authority may be responsible or, in certain cases, the managers or governors of a voluntary school. The owner will not be liable for damage arising through the negligence of his servants. Where danger is known to exist, liability may to some extent be avoided by suitable warning notices and guards.

17 In loco Parentis

This chapter must end where it began by reminding the reader that he is *in loco parentis* to the children in his charge, and that the

law asks merely that he should act reasonably in this capacity. Provided that his actions are in accordance with general and approved educational practice, and provided that he takes such care of his children as a careful father would take, he has little to fear from the mischances of school life.

A year or two before the war, some grammar school pupils were playing, contrary to the school rules, with a cricket pitch roller which ran over one of them. The parents sued the governors and the master in charge, claiming damages for negligence.¹ The case was heard at Leeds Assizes in March, 1938, and Mr Justice Hilbery's summing up was a masterly exposition of the doctrine of the careful father, which will form a fitting conclusion to this chapter.

The judge said, 'It was not suggested for the plaintiff that anybody could reasonably say that a master must watch boys, not merely in classes, but throughout every moment of their school lives.

'What has a reasonably careful parent to do? Supposing a boy of yours has some other little boys, who are friends of his, coming to tea on a Saturday afternoon and you see them all playing in the garden. Suppose your garden roller happened to be there. Would you consider you had been neglectful of your duty to the parents of those other boys because, for five minutes, you had gone into the house and two of them had managed to pull the roller over the third?

'Would you think that, in those circumstances you had failed to exercise reasonable supervision as a parent? These things have got to be treated as matters of common sense, not to put on Mr Johnson any higher standard of care than that of a reasonably careful parent.

'If the boys were kept in cotton-wool, some of them would choke themselves with it. They would manage to have accidents we always did, members of the jury—we did not always have actions at law afterwards.

'You have to consider whether or not you would expect a

¹ *Hudson v Governors of Rotherham Grammar School and Selby Johnson* (1938), *Yorkshire Post*, 24 & 25 March 1938.

headmaster to exercise such a degree of care that boys could never get into mischief. Has any reasonable parent yet succeeded in exercising such care as to prevent a boy getting into mischief and—if he did—what sort of boys should we produce?”

XII

PUNISHMENT

I The Teacher's Authority

When appointing a tutor for himself, the infant Henry VI gave him licence 'reasonably to chastise us from time to time', and the law has always recognized the right of the teacher to inflict such reasonable punishment on his pupils. In a famous case,¹ Mr Justice Phillimore laid down the principles by which the law judges a teacher's punishment in these words: 'My brother, Mr Justice Walton, and I have considered the matter carefully and I will read a sentence which he has been good enough to compose: "The ordinary authority extends not to the head teacher only but to the responsible teachers who have charge of classes." In other words, if I may add anything to what he has written, a teacher of a class has the ordinary means of preserving discipline and, as between the parent of the child and the teacher, it is enough for the teacher to be able to say, "The punishment which I administered was moderate, it was not dictated by any bad motives, it was such as is usual in the school and such as the parent of the child might expect that the child would receive if it did wrong."'

The teacher's powers in this matter stem from the fact that he is *in loco parentis* to the children in his charge and thereby he assumes some of the rights—and duties—of the natural parent. The latter's duty in this matter was defined by Mr Justice Field,² who said, 'It is his duty, if the child will not do what he advises it to do, to take whatever steps he considers necessary for its correction. But he must act honestly in this course, there must be a cause which a reasonable father believes justifies punishment.'

¹ *Mansell v Griffin* (1908) 1 KB 947

² In *Hutt v Governors of Haileybury College* (1888) 4 TLR 623

Parliament has endorsed the views of the judges in this matter by a clause in the Prevention of Cruelty to Children Act, 1904, which was re-enacted in a later statute ¹ 'Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful charge of a child or young person to administer punishment to him'

2 The Canons of Punishment

There are three standards by which punishment, generally, must be judged. In the first place it is retributive—an expression of the displeasure of society at the offence for which a person is punished. Secondly it is deterrent—an example to prevent others from committing the offence for which punishment is meted out. Finally, it should be reformative—an attempt to turn the offender into an acceptable member of the community. Modern practice has tended to place the greatest emphasis on the last of these principles.

The exact forms of punishment to be used in schools are not laid down by Parliament. Teachers are left largely to their own discretion and they would do well to bear a double criterion in mind. Not only should their punishments come within the scope of Mr Justice Phillimore's summing up in *Mansell v Griffin* quoted above, but they should also apply the test of the canons laid down in the last paragraph in order to assure themselves that their motives are right.

3 Local Education Authority Regulations

All local education authorities have some regulations dealing with punishment. These are usually concerned chiefly with the more severe forms such as corporal punishment, suspension and expulsion. Minor punishment, as a rule, is left largely to the discretion of the teacher, although some guidance may be given on certain points, such as the length of time for which it is reasonable to detain a child. Teachers must know the rules of their own authority and be careful to observe them.

Two forms of action against the teacher may follow the use of

¹ Children and Young Persons Act, 1933, s. 1 (7)

punishment and, as they are quite independent, a particular case may lead to either or both. A case may be brought in the courts, either as a civil action claiming damages, or as a criminal charge of assault. The second course is for the local education authority to take disciplinary measures against the teacher for breach of its regulations.

In the latter case, the authority is concerned merely with the fact that its rules have been broken and the teacher's contract thereby breached. This may be so, even where there has been no offence of which the courts can take cognizance, indeed, legal action against the teacher may have failed.¹ In accepting appointment the teacher has undertaken to obey the authority's code and, if he fails to do so, he has broken the terms of his agreement. It is for this reason that a newly appointed teacher cannot be urged too strongly to acquaint himself with his authority's rules.

The fact that a teacher has broken the authority's regulations does not, however, necessarily deprive him of a defence in the courts, though it will weaken his case. In *Mansell v Griffin*, Mr Justice Phillimore said, 'It did not, in our view, necessarily follow because, as a matter of internal government, the teacher was prohibited from administering corporal punishment herself that she was necessarily without defence when it came to a question of an action brought by the pupil against her for trespass to the person or of an indictment for assault. It seems to us that the question must be deeper and must rest on more general considerations. It was admitted that the question depended on the delegation of parental authority to administer moderate corporal punishment to a child, but it was contended for the plaintiff that a parent could only be considered as delegating his or her authority to a headmaster or headmistress. The fact that the teacher herself did not know of the restrictive regulation is probably immaterial, although it does have a bearing on the teacher's good faith.'

In another case a teacher used an unorthodox instrument—a blackboard pointer—to cane all but one of her class of thirty-eight children. Eight parents took out a summons against the

¹ This was so in *Gill v Leyton Corporation*. See page 64.

teacher, of which seven were adjourned when the teacher decided to appeal against a fine of one pound, with five guineas costs, on the first case. Allowing the appeal,¹ the Recorder said, 'I think it was most regrettable that this prosecution was launched . . . The only point I was concerned with has not given any difficulty. I have concluded that what she did to the child did not amount to excessive punishment.'

Nevertheless, the use of an unorthodox or forbidden method of punishment is bound to imperil the teacher's position, and it can form no defence against disciplinary action by the local education authority.

4 Unreasonable Punishment

It has already been mentioned that any punishment inflicted in school must be reasonable. If it is so, a teacher is not liable for accidental injury to a pupil.² The consequences of a mischance during excessive or illegal punishment were clearly pointed out by Lord Chief Justice Cockburn in a case³ concerning a boy who died after being beaten by a schoolmaster with a thick stick and a skipping rope, 'secretly in the night' for two and a half hours. The Lord Chief Justice said, 'If it [corporal punishment] be administered for the gratification of passion or rage, or if it be immoderate or excessive in its nature or degree, or if it be protracted beyond the child's power of endurance, or with an instrument unsuited to the purpose and calculated to produce danger to life or limb in all such cases, and if evil consequences ensue, the person inflicting it is answerable to the law and—if death ensue—it will be manslaughter.' In this case the jury did convict of manslaughter. The fact that the father had authorized punishment was irrelevant as he did not, and no-one can, authorize excessive punishment.

5 Authority out of School

Many cases concerning corporal punishment are brought by parents who maintain that the schoolmaster's writ does not run

¹ *Hazell v Jeffs* (1955), *Times*, 11 January 1955.

² *Scorgie v Lawrie* (1883) 10 R. Ct. of Sess. 610.

³ *R v Hopley* (1860) 2 F & F 202.

beyond the school's walls. The courts have laid it down clearly that the authority is not so limited, but the precise bounds of that power have never been defined. In general, it may be said that the teacher may exercise such control over the pupil as is necessary to maintain the implied contract between parent and teacher. If this is so, the teacher's jurisdiction extends to all matters which may affect the welfare of the school.

It is important to distinguish between matters where the child is the offender and those where the parent has exercised control over the child to prevent him from acting in accordance with the school rules. In cases falling in the latter category the child must not be punished, although it is possible to consider suspending him with a view to expulsion if it appears that the parent's action is so subversive of school discipline as to break the contract to educate.

A boy threw some putty at a fellow-pupil on the way to school. The latter complained to the headmaster who caned the assailant. The justices convicted the headmaster of assault, but the divisional court quashed the verdict.¹ Mr Justice Collins said, 'It is clear that a father has the right to inflict reasonable personal punishment on his son. It is equally the law, and is in accordance with very ancient practice, that he may delegate this right to the schoolmaster. Such a right has always commended itself to the common sense of mankind. It is clear that the relation of master and pupil carries with it the right of reasonable corporal punishment. As a matter of common sense, how far is this power delegated to the schoolmaster? Is it limited to the time during which the boy is within the four walls of the school, or does it extend beyond that limit?

'In my opinion, the purpose with which the parental authority is delegated to the schoolmaster, who is entrusted with the bringing up and discipline of the child must, to some extent, include an authority over the child while he is without the four walls.

'It may be a matter of fact in each case whether the conduct of the master in inflicting corporal punishment is right. Very grave consequences would result if it were held that a parent's authority

¹ *Cleary v Booth* (1893) 1 QB 465

was exclusive right up to the door of the school and then, and then only, the master's authority commenced. It would be a most anomalous result to hold that, in such a case as the present, the boy who had been assaulted had no remedy by complaint to his master who could punish the assailant by thrashing . . . It is obvious that the desired impression is best brought home by a summary and immediate punishment. . . . In my opinion, parents do contemplate such an exercise of authority by the schoolmaster. I should feel very sorry if I felt myself driven to come to the opposite conclusion, and am glad to say that the principle shows that the authority delegated to the schoolmaster is not limited to the four walls of the school.¹

In another case¹ a headmaster caned a boy for smoking in the street and the father brought an action on the grounds that the boy had parental permission to smoke. The case was dismissed by the magistrates and the father was ordered to pay five guineas costs. He asked for a case to be stated, but the magistrates certified the application as frivolous. A rule *nisi* was then obtained to allow a hearing in the High Court on the grounds that the magistrates were wrong in allowing that the defendant had authority to inflict corporal punishment on the boy, that the boy was at the material time under the authority of his father and that, since the father had given the boy permission to smoke, the headmaster had no power to inflict punishment on him for so doing.

Lord Hewart held that the rule forbidding pupils to smoke during term time, whether within the school precincts or elsewhere in public, was a reasonable rule. The boy knew of the rule and deliberately broke it, the punishment administered was a reasonable and proper punishment for the breach of the rule. By sending the boy to school the father had authorized the schoolmaster to administer reasonable punishment to the boy for the breach of a reasonable rule.

In a more recent case,² a boy ran across the road on the way to school, just in front of a teacher's car. The headmaster, who had frequently spoken to the children about road safety, caned the lad

¹ *R v Newport (Salop) Justices, ex parte Wright* (1929) 2 KB 416

² *Cook v Attock* (1955), *Evening Standard*, 13 January 1955

and the parents brought a case against him for assault. The magistrates dismissed the case and ordered the plaintiff to pay five guineas costs.

6 Detention

The total restraint of another's liberty by force or show of authority is false imprisonment and actionable before the courts. Of this, Mr Justice Phillimore said, in *Mansell v Griffin*, 'It is, I suppose, false imprisonment to keep a child locked up in a classroom, or even to order it to stop under penalties in a room for a longer period than the ordinary school time without lawful authority. Could it be said that a teacher who kept a child back during play hours to learn over and say a lesson, or who put upon him a dunce's cap—could it be said that such a person would be liable in an action for trespass to the person? The cases I have instanced are not cases of the infliction of blows, but they are cases of interference with the liberty of the subject and it seems to me that the principle must be the same for all these cases.'

The right of a teacher to detain a child was also referred to by Mr Justice Field,¹ when he said, 'The law, therefore, does justify a parent² in a case where he honestly considers correction necessary, in administering blows in a reasonable and proper manner. This power is not limited to corporal punishment but extends to detention and restraint.'

Teachers should be aware of any regulations of their employing authority which may limit the period for which a child may be detained, and should ensure that they comply with them.

7 Corporal Punishment

By far the greatest number of cases concerning discipline arise from the use of corporal punishment. Much has already been said to show that the courts have consistently upheld the teacher's right to administer reasonable physical chastisement, but perhaps the best summary is to be found in the words of Lord Chief

¹ *Hutt v Governors of Haileybury College* (1888) 4 TLR 623.

² And hence, by delegation of parental authority, a teacher. See *Cleary v Booth*, page 159.

Justice Cockburn.¹ He said, 'By the law of England, a parent or schoolmaster (who for this purpose represents the parent, and has the parental authority delegated to him) may, for the purpose of correcting what is evil in the child, inflict moderate and reasonable corporal punishment—always, however, with this condition that it is moderate and reasonable.'

On the whole, mass corporal punishment is to be deprecated, but on professional rather than legal grounds. In the case of *Hazell v Jeffs*, already quoted,² the punishment of a large number of children was involved and, in a similar case, where a master had caned a whole class four times because particular offenders failed to own up, the magistrates dismissed the case, commenting that the teacher had acted reasonably in the interests of discipline.³

Opinions vary widely on the question of the most suitable part of the body for the infliction of corporal punishment, and teachers with authority to use the cane should make certain of any directions by their own local education authority. Some years ago, a bench convicted a schoolmaster who had caned a pupil on the hands, because the justices felt that the risk of injury was grave, even though none had resulted in that particular instance. Quashing the conviction,⁴ Mr Justice Charles said, 'When Parliament lays down a chart showing the particular region of the body to which corporal punishment in schools shall be confined, the court will take care that those limits are not overstepped. At present there is no such chart.'

In approved schools the Home Office has laid down strict regulations regarding corporal punishment⁵ and, although these do not bind other schools, they are of interest as showing what is to some extent officially regarded as reasonable. The following is a summary

Boys

(a) Only a cane or tawse of an approved pattern may be used,

¹ In *R. v Hopley* (1860) 2 F & F 202

² *R v Dennis* (1954), *Times*, 19 November 1954

³ *Gardner v Bygrave* (1889) 53 JP 743

⁴ The Approved School Rules, 1933, Nos 35 and 36

⁵ See page 157

(b) Only a cane may be used on the hands, and the number of strokes must not exceed three on each hand. No boy over fifteen may be caned on the hands,

(c) When applied on the posterior, either a cane or a tawse may be used over the boy's ordinary cloth trousers, and the number of strokes must not exceed six for boys under fifteen or eight for boys of fifteen and over, with the proviso that the managers may authorize up to twelve strokes for a boy in the higher age-group,

(d) In the case of boys with any physical or mental disability, the prior approval of the medical officer must be obtained,

(e) It must not be inflicted in the presence of other boys

Girls

(a) Only a cane of an approved pattern may be used,

(b) Only girls under fifteen may be caned, and the number of strokes may not exceed three on each hand,

(c) In the case of girls with any physical or mental disability, the prior approval of the medical officer must be obtained,

(d) It must not be inflicted in the presence of other girls

Legally, there is no difference between boys and girls in this matter, so far as ordinary schools are concerned. Most authorities have their own rules which normally lay down that it may be inflicted on girls only by a woman. In general, it is confined to the hands.

Local authority requirements normally forbid the use of corporal punishment by probationary teachers, and some require several years' experience before they will authorize a teacher to use the cane. All irregular forms of physical punishment, such as boxing the ears and shaking, are strictly forbidden.

8 Punishment by Prefects

The law has tended to regard prefects as part of the disciplinary system of a school. Punishment which is otherwise legal does not become unlawful merely because it has been administered by a duly authorized prefect. There is, however, a duty to ensure that the penalties enforced by prefects are reasonable and moderate.

9 Suspension and Expulsion

The technical procedure for dealing with cases where suspension or expulsion has become necessary is contained in the rules of management or articles of government for each school, and has already been noticed.¹ Since these penalties are the ultimate sanctions which can be employed by a school, it is important that they should not be used lightly or unadvisedly. Even where the head has the power to expel, it is desirable that he should suspend in the first instance in order to give the pupil and his parents the opportunity of a constitutional hearing.

On this subject, Lord Chief Justice Cockburn said,² 'It is incidental to the authority of a headmaster to expel from the school over which he presides any scholar or student whose conduct is such that he could not any longer be permitted to remain without damage to the school. This is, however, not to be exercised arbitrarily. It may be questioned and, although no doubt a large discretion must be allowed, it must not be exercised wantonly or capriciously.'

¹ See page 103

² In *Fitzgerald v Northcote* (1865) 4 F & F 656

XIII

CHILDREN IN TROUBLE

I The Juvenile Courts

Since 1909 a special system of juvenile courts has existed to deal with children (under the age of fourteen) and with young persons (aged fourteen and under seventeen) who find themselves in trouble with the law. Children may be brought before these courts either because they have committed an offence, because they are in need of care or protection, because they have failed to attend school, or because they are beyond control.

In English law no child below the age of eight is held to be criminally responsible for his acts and such children, therefore, appear before the court only when an offence has been committed against them and it is believed that they are in need of care or protection, or when they have not been in regular attendance at school, or when they are beyond control.

Juvenile courts are less formal than their adult counterparts and cases are usually heard by three magistrates specially selected for their fitness to judge matters concerning juveniles. As a rule, one of the justices is a woman.

Such courts must be held at a different time, or in a different place, from the adult courts and the procedure is modified considerably in order that the offenders may understand exactly what is happening. Only officers of the court and those concerned with a particular case are present, with the exception of *bona fide* reporters. Press reports are restricted and nothing may be printed which might lead to the identification of the juvenile or of his school, except by direction of the justices or the Secretary of State. Authorized persons, such as students from training

colleges, etc., may be given permission to attend as observers on application to the clerk of the court.

Like all courts of law, the juvenile court is required to ascertain the truth of the matter before it, and the principal difference lies in the method of treatment. Punishment may be—and often is—inflicted, but the prime aim of the court is to do what is best for a young offender and to give him every opportunity to redeem himself. This is a statutory duty laid upon the court in the following terms: ¹ 'Every court in dealing with a child or young person who is brought before it, either as being in need of care or protection or as an offender or otherwise, shall have regard to the welfare of the child or young person.'

The parents of children brought before the court are required to attend unless the court decides that this would be unreasonable, and are often made to play an active part in the reformation of the offender. There is an increasing tendency to secure the effectiveness of parental co-operation by binding the parent to exercise proper guardianship. If the child gets into further trouble during the currency of the recognizance, the court may order the parent to forfeit the sum in which he is bound, or part thereof.

It is not possible in a book of this scope to deal in detail with the work of these courts. Many teachers, however, come in contact with them because their pupils appear before them and it is desirable that teachers should understand their scope and the various orders which they make. This chapter is designed to provide a brief outline only, and those who are particularly interested should study one of the books devoted to this subject.²

2 Offences by Juveniles

As has been stated above, no child below the age of eight can be held criminally responsible for any act, but he may be brought before the court as being in need of care or protection or in

¹ Children and Young Persons Act, 1933, s. 44 (1)

² The most detailed book is Clarke Hall and Morrison *The Law Relating to Children and Young Persons*, Fifth Edition (Butterworth, 1956). A slighter, but invaluable work of reference which should be in every head teacher's library is Mumford *Guide to Juvenile Court Law*, 3rd Edition (Jordan, 1950).

certain other cases Children from eight to fourteen are criminally responsible only if it can be proved that they are aware of the wrongful nature of their acts They may be dealt with only by the juvenile court, except for homicide or in cases when they are charged jointly with some person other than a child, and that person is committed for trial

Young persons from fourteen to seventeen years of age are criminally responsible for their acts and may be dealt with summarily for all offences by the juvenile courts, except in the case of homicide or when they are charged jointly with an adult who is sent for trial They may, however, elect to be tried by jury for any offence for which an adult could be sent to prison for more than three months

3 Cases where a Juvenile has not committed an Offence

Juveniles may be brought before the court for a number of reasons when they have committed no offence The parent may bring the child as being beyond control, and the court may deem it expedient to make an order Before doing so, however, it must be assured that the parent understands the nature of that order and is prepared to consent to it being made This undertaking is usually obtained before a summons is granted, but the parent may change his mind at any time before the order is actually made.

If a child appears to be in need of care or protection, it may be brought before the court by a local education authority, a constable or an authorized person ¹ The court may then make an appropriate order The various categories of children in need of care or protection are too numerous to quote in full here, but are listed in *Clarke Hall and Morrison* ²

Cases concerning failure to attend school are dealt with under this head and the procedure is explained in Chapter IX ³

¹ Authorized persons are officers of

(a) The National Society for the Prevention of Cruelty to Children,
(b) The Liverpool Society for the Prevention of Cruelty to Children,
(c) The Birkenhead and Wirral Society for the Prevention of Cruelty to Children

² *Op cit*, pages 64-65

³ See pages 121-123

Juvenile courts may also deal with the adoption of children under the Adoption Acts, 1926-50

4 Reports

When there has been a finding of guilt, or the justices have found proved a case in which there is no offence by the juvenile, the court is provided with reports on the child's general conduct and home surroundings, his school record and his medical history. The provision of the school report is the duty of the local education authority but the report is prepared, in the first instance, in the child's school. If these reports are not immediately available, the court may remand the juvenile, either in custody or on bail, until they are received.

The purpose of these reports is to put the court in possession of the child's whole background so that it may deal effectively with the case and have regard to its duty to consider the welfare of the youngster before it. It is therefore important that the reports should be both factual and full. They are marked *Confidential* but the parent has a right to be told the substance of any part which reflects upon the home surroundings, and the child must be told of anything which deals with his conduct. This is not a breach of confidence: neither the parent nor the child can be expected to correct things which are wrong unless they are told what those things are.

In some cases a juvenile is remanded in custody for a special report which can be made only whilst he is under the supervision of a remand home for some time.

5 Orders of the Court (Offences)

(a) *Absolute Discharge*—After a finding of guilt¹ the court may order the offender to be discharged absolutely. No further action may then be taken in respect of this offence, but it should be noted that an absolute discharge is to be distinguished from a discharge after acquittal. The court may order an absolute discharge if it feels that it is not desirable to inflict punishment and that a probation order is not appropriate.

¹ The term 'conviction' is not used in the juvenile courts.

(b) *Conditional Discharge*—The court may order the offender to be discharged on condition that he commits no further offence during such period as it may order which does not exceed twelve months. The offender must be told that, should he commit another offence during that period, he will be liable to punishment both for that and for the offence in respect of which he is now being discharged. The court may allow a consenting person to enter into a security for the child's good behaviour during the period of the discharge.

(c) *Probation Order*—An offender may be placed under the care of a probation officer for not less than one nor more than three years. The court may add to the order requirements (such as place of residence, abstention from undesirable company, etc.) which it considers necessary for the welfare of the offender. Security may be allowed as in the case of a conditional discharge. An offender may be brought back to court for breach of any of the requirements of the order.¹ There is also provision for the order to be discharged or amended in certain circumstances.

Probation Officers are men and women who are trained after rigorous selection, for the purpose of acting as the guide, philosopher and friend of youngsters who are in trouble. Their work is arduous, almost unlimited as to hours, often difficult and depressing, but sometimes richly rewarded. They take over from the court the fulfilment of its function to secure the welfare and reformation of the probationer. The offender must report regularly to the probation officer and he, in turn, is responsible to the court. The work requires a strong social conscience, equally strong health, a high vocation and sheer refusal to be daunted by difficulties.

(d) *Fine*—A child may be fined not more than forty shillings, a young person dealt with summarily for an indictable offence not more than ten pounds. In the case of a child, the parent must be ordered to pay the fine unless the court is satisfied that he cannot

¹ Since a probation order requires that the offender shall lead an honest and industrious life and this has been held to include regular attendance at school he may be brought back to the court for breach if he absents himself from school without good cause whatever the original offence for which the order was made.

be found or that he has not conduced to the offence by neglecting to exercise proper guardianship. In the case of young persons, the court may order the parent to pay the fine, but this is not obligatory. Where costs are ordered against a child who is fined, they must not exceed the amount of the fine. Orders for restitution or compensation may also be made in addition to other penalties and, as with fines and costs, they may be the subject of a money payments suspension order which enables the sum to be paid by instalments under the supervision of a probation officer.

(e) *Attendance Centre*—A child or a young person may be ordered to attend, for a total of not more than twelve hours, at an attendance centre where he is given appropriate employment or instruction. Such an order may be made for breach of probation or for any offence for which the juvenile could have been sent to prison, or imprisoned for not paying a fine, if he had been over twenty-one. Attendance is limited to three hours on the occasion of each visit and, as far as possible, it must not be ordered during school or working hours. Such orders can be made only in respect of juveniles not less than twelve and under twenty-one years of age, and by a court duly notified of the existence of such a centre to serve the area.

(f) *Detention Centre*—A detention centre is a place provided for persons of between fourteen and twenty-one years of age who have committed offences for which, if more than twenty-one, they could have been imprisoned or sent to prison in default of payment of a fine. Normally, the maximum period of detention in such a centre is three months during which the person is detained and employed under suitable discipline. In certain cases the court may order a longer period of detention, but it must not exceed six months in all.¹

(g) *Borstal Treatment*—Offenders between sixteen and twenty-one may be detained in Borstal institutions and given training and instruction intended 'to conduce to their reformation and the prevention of crime'.² If a juvenile court deems such an order to

¹ At the time of writing only two such centres exist, and committals are dependent upon vacancies.

² Prison Act, 1952, s. 43.

be necessary, it must commit the offender in custody for the sentence to be promulgated by Quarter Sessions. The maximum period of committal is three years from the date of sentence, and a release may not be granted in a shorter period than nine months. The offender is supervised after release until four years have elapsed from the date of sentence and, should he fail to comply with the conditions of his release, he may be recalled.

(h) *Detention in Remand Home or Centre*—A remand home is normally used as a place for the safe custody of a child or young person to ensure that he will attend court on the next hearing of his case, or to prevent a repetition of the offence during the waiting period. Remand centres are similarly used, but only for young persons between the ages of fourteen and twenty-one. In certain cases it is possible to use the homes and centres as a 'place of safety' for those awaiting a final order as being in need of care or protection or beyond control. The homes and centres may also be used, for not more than one month, for the committal of those who might, if adults, have been imprisoned for an offence which they have committed. A further use is for the remand of those awaiting placement in an approved school.

(i) *Imprisonment*—Children may not be imprisoned. A young person may be sent to prison, whilst on remand, only if the court certifies that he is too unruly or depraved for committal to a remand home, and a remand centre is not available.

(j) *Fit Person Order*—A fit person order may be made when a child or young person has been found guilty of an offence for which an adult could be imprisoned. The order commits the offender to the care of the person named in the order until he reaches the age of eighteen. Such an order, in effect, makes the fit person the child's guardian for all legal purposes so long as it is in force. A local authority is often named as the fit person, in which case arrangements are made for the child to be boarded out or placed in a hostel. Such an order is normally made when it is felt that the child's home background is such that it is necessary to remove him from it in his own interests, and an approved school order is not expedient. A fit person order may be linked with a probation order. The religious upbringing of the child must be

safeguarded when the order is made. Fit person orders may also be made for not more than twenty-eight days in respect of offenders awaiting placement in an approved school. All fit person orders contain provisions for amendment and revocation.

(k) *Approved School*—A child or young person may be sent to an approved school for three years or until four months after he attains school leaving age, whichever is the later. If he has reached the age of sixteen when the order is made, it does not expire until he is nineteen. Children of less than ten are not normally sent to an approved school unless the court feels that there is no other satisfactory way of dealing with them. A person released from an approved school remains under the supervision of the school's managers until he is eighteen (if he was under fifteen on release), for three years, or until he is twenty-one, whichever is the shorter period (if he was fifteen or over on release). During this period the offender can be recalled. Good behaviour and progress can earn a release on licence, and some juveniles are sent to short term schools where such action may be possible after nine months or a year. After committal by the court, the selection of an approved school is made through the central pool at the Home Office but the magistrates have the right to make recommendations. The school must conform to, or cater for, the religious persuasion of the child or young person.

6 Orders of the Court (Care or Protection, etc.)

(a) *Supervision Order*—A supervision order placing the juvenile under the care of a probation officer, or other suitable person, may be made in respect of such a person when he is discharged from a fit person order, is beyond control, is in need of care or protection or has been brought before the court for failing to attend school regularly. Such an order may be linked with a fit person order or with a recognizance by the parent to exercise due care and guardianship. As in the case of a probation order, various requirements may be inserted. Provisions are made for the discharge or amendment of the order. A child or young person may be brought back to court for breach of any of the conditions of the order.

XIV

EXTRANEOUS DUTIES

1 General

It has long been accepted that the work of a teacher is not merely to instruct, but also to educate his pupils in the fullest sense of the word. Teachers have themselves recognized this fact and they have undertaken a wide range of voluntary duties connected with games, meals, school societies, visits, journeys and so forth.

Legally, these duties remain voluntary, except supervisory duties necessary for the good conduct of the school and those concerned with the supervision of school meals. In some cases, posts are advertised with an indication that willingness to assist with, for example, the school cadet force would be an advantage. This is a matter which rests between the successful candidate and the employer, but it should be remembered that in maintained schools a teacher may not be compelled to perform any duties except such as are connected with the work of a school. It must be admitted that this definition leaves plenty of scope. In any case, most schools now have a more or less highly developed social life and there are few teachers who would not wish to take some active part in this.

2 Dinner Duty

It is laid down in the Act that the Minister's regulations for the provision of school meals 'shall not impose upon teachers at any school or college duties upon days on which the school or college is not open for instruction, or duties in respect of meals other than the supervision of pupils'.¹ It is clear that teachers may be required

¹ Education Act, 1944, s. 49

by such regulations to supervise the children at their meals, although meals helpers may also be employed. The collection of dinner-money by the teaching staff is customary in most schools, but it is a purely voluntary duty. This was decided in the High Court in 1956.¹

Early that year members of the National Association of Schoolmasters had stopped collecting dinner-money in Sunderland schools as a protest against the Teachers (Superannuation) Bill, then before Parliament. They were given notices of dismissal by the authority, but the notices were subsequently withdrawn except in the case of six teachers who were held to have initiated the restrictive action. These teachers sought an injunction in the High Court to restrain the authority from acting on the notices on the ground that they were *ultra vires*, and a declaration that the Council was not entitled to impose on its teachers any duties in respect of meals other than the supervision of pupils.

Mr Justice Barry said that he was unable to accept the authority's contention that, because the 1921 Act specifically stated that teachers need not collect dinner-money and the 1944 Act had no such reference, Parliament had intended to change the law because teachers in many places were collecting such money. He held that the collection of dinner-money was a duty in respect of meals within the meaning of Section 49 of the Act, and that the service which had been given by the teachers for this purpose was voluntary service. The Council had, therefore, acted *ultra vires* in dismissing the teachers for refusing a service which the local education authority had no right to impose as a condition of appointment.

It should be noted in this case that the teachers were not opposed to the actual collection of dinner money. Their objection was based on an attempt by the local education authority to compel them, under threat of dismissal, to perform a service which was purely voluntary and which, therefore, they could withhold at will.

¹ *Price and others v Sunderland County Borough Council* (1956)
1 WLR 1253

3 Playground Duty

It is generally agreed that when a large number of children are gathered together in a playground during a break in the school session, it is desirable that they should be under some form of supervision. This is a matter of the internal organization and discipline of the school and, in accordance with the rules of management or articles of government, is under the control of the head. Whilst the presence of a teacher in a playground will not prevent every accident from happening, the teacher can ensure that dangerous play is, as far as possible, avoided and he will be there to give assistance should an accident occur.

If there is a duty rota and a teacher has failed to perform a duty to which he has been allocated, the question of negligence might be raised in the case of an accident.

4 Road Crossing

At one time it was quite usual for teachers to supervise children leaving school premises which opened on to a busy road. They had no real authority over the traffic and local authorities have now been given powers¹ to make arrangements for the patrolling of places where children cross roads on their way to or from school by persons other than police constables. Between eight o'clock in the morning and half past five in the afternoon, such patrols have power to control traffic on exhibiting a sign of a size, colour and type prescribed by the Minister of Transport's regulations. Patrols must wear a uniform approved by the Secretary of State.

When children are being taken through the streets for school purposes, the teacher in charge is *in loco parentis* and therefore responsible for the safety of the pupils.

5 Other Voluntary Duties

The responsibility of a teacher for the welfare of his pupils is not lessened by the fact that he has undertaken the duty voluntarily whether he is on, or away from, the school precincts. Neither is

¹ School Crossing Patrols Act, 1953

such liability affected by the end of the normal school hours. In all cases where he has accepted the care of children, he must take reasonable precautions for their safety.

The East Ham Corporation was sued in 1926 following an incident at the British Empire Exhibition at Wembley. During the dinner-hour, the master in charge of a school party gave the boys permission to amuse themselves for a while. One boy caught his foot between the platform and the train on the Never-Stop Railway, and was so badly injured that he spent nineteen weeks in hospital. Despite a contention that a reasonable father would have allowed a fourteen-year-old boy to go on the railway, the jury found that negligence had been proved and awarded sixty pounds agreed damages against the Corporation.

In cases where a teacher voluntarily takes charge of children out of school hours in an unofficial capacity, it should be made clear to the parents in advance that such an arrangement is purely between themselves and the teacher as an individual. In such cases the school authorities can accept no responsibility.

Teachers taking parties of children to concerts, sports meetings and similar events where there are large gatherings of children from many schools should be especially watchful of their charges. On such occasions there is normally a corps of experienced stewards who are concerned with the general oversight and marshalling of parties, but the discipline of each group is the responsibility of the teachers escorting it. Quite apart from the fact that it creates a thoroughly bad impression if teachers settle down to enjoy themselves and allow their pupils to do as they please, it should be remembered that with large crowds there is always the risk that small children may be lost and, furthermore, in the event of a mischance, panic spreads rapidly. Rigid supervision is especially necessary on staircases.

6 Games

It is important that teachers supervising games should ensure that they are played in accordance with the accepted rules, and that unfair play is penalized. This course will permit a defence of

'general and approved practice'¹ in the event of a court action following an accident.

7 Uniformed Youth Organizations

School units of national youth organizations, such as the cadet forces and the Scout movement must observe the rules of the responsible national body insofar as they apply to school groups. It is quite wrong for a school unit to feel free to indulge in idiosyncrasies in such matters, indeed it should set an example. This is particularly important in the case of uniformed organizations where parades may sometimes be held jointly with units which are not attached to schools.

It should also be remembered that, in most cases, such organizations have indemnity policies covering their officers against claims arising from accidents during approved activities. Such policies are void in respect of incidents where the organization's rules have been broken in a material point.

8 Bathing and Boating

When bathing or boating form part of the activities of a school excursion, it is desirable to seek—and follow—local advice regarding currents, tides and general safety. In bathing it is a good rule to have two strong swimmers as pickets. The pickets should be changed and ready for any emergency, but they should not enter the water, unless an emergency arises, until all the other bathers have left. This is the rule of the Scout movement and is based on long experience. In the case of school Scout camps it must be observed.

It is also useful to obtain specific permission for swimming from the parents of each child. Those with any defect which may be aggravated by bathing should in no circumstances be allowed to enter the water.

9 Insurance

When taking children away for school journeys or camps, enquiry should be made to ascertain whether the local education authority

¹ See page 143

or the organization sponsoring the visit has an adequate policy to cover possible claims. If not, a special policy should be arranged with an insurance company, the premiums being chargeable to the cost of the journey.

10 School Journeys

Teachers in charge of school journeys are responsible for the children in their care, by day and by night, during the whole period of the journey. It is therefore essential to have an adequate staff, fully competent to deal with any emergencies. To attempt a journey with insufficient teachers is the most ardent way to court disaster. If there are both boys and girls in the party, the staff must also be mixed.

When visits abroad are being planned, it is essential to make sure that each child has a valid passport or is entered on the party's collective certificate. The current passport, customs and currency regulations should be studied carefully and the importance of declaring dutiable articles stressed to the children.¹ It must also be remembered that no child who is the subject of a court order may be taken out of the country without the permission of the court. This applies to school journeys and, if it is proposed to include any such children in a party, it is necessary to make an application to the court in good time.

11 The Law of Waterways

Canoeing and boating are becoming increasingly popular with school parties, and it is necessary, if trespass is to be avoided, to know something of the law of waterways.

Tidal waters are public highways and their ownership is vested in the Crown. They may be used freely by anyone who does not interfere with the similar rights of others.

Non-tidal waters are vested in the owners of the adjacent land and

¹ Those planning school journeys for the first time will find invaluable advice in the three pamphlets issued by the School Journey Association of London which are noted on page 220. Free to members, they are obtainable by others at a small charge. Membership of the Association is not confined to schools in London.

there is no right of passage across them unless, in specific cases, it has been granted by Act of Parliament or has become customary through immemorial use. Such a right is similar to the usage of a public footpath across a field and is primarily for passage from one place to another, it confers no right to recreation, to fishing or to landing on the banks. Where no right of way exists, entry to non tidal waters is trespass.

Canals are the property of the authority to which they belong, and passage along them may be granted on payment of the appropriate dues, subject to observance of the regulations.

12 Transport

To save expense, school parties are sometimes transported by lorry. No charge may be made by the owner of the lorry for this service but he may, if his vehicle is properly licensed and insured, charge for the carriage of luggage and equipment. The lorry must be correctly insured for the purpose for which it is used, and the tax paid must be adequate for the conveyance of the children. The owner is not, however, obliged to insure against accidents to passengers travelling free of charge and, if he has not adequate cover, teachers are strongly advised to take out a policy in respect of such risks.

13 Letters of Indemnity

Before taking children on an outing or school journey, it is desirable to obtain a letter of indemnity from the parent of each child. Such letters have no legal force but, in the event of a claim arising from alleged negligence, the fact that the parent's attention had been drawn to possible risks would weigh in the teacher's favour.

Some years ago, a party of boys spent a half holiday working for a farmer. During the course of the afternoon a boy was hit by a clod thrown by another pupil. The injured boy lost an eye and was awarded eight hundred pounds damages. The verdict was reversed on appeal, the judges maintaining that no supervision was needed on such an occasion. It is possible that the original

decision was influenced by the fact that no letters of indemnity had been signed before the outing. A suitable form is as follows:

I agree to allow my child to take part in a school.....on... .. 19.. . and I hereby indemnify all responsible in any way for the organization of the activity named against all claims arising through illness, accident or any other cause.

(Signed)

.....19....

14 Dereliction of Duty

Once a teacher has undertaken a duty, whether it be obligatory or voluntary, it is incumbent upon him to perform it conscientiously. There are few heads who would burden their staffs with a multitude of unnecessary tasks, but a certain amount of supervision is necessary for the good order and discipline of a school.

The fact that duties were normally performed with care in a school influenced a judgement by Lord Justice Scrutton.¹ A boy had hit a golf ball through an open door from a playground and struck another boy in the eye, with the result that the sight of that eye was lost. The governors of the school were dismissed from the case by Mr Justice Horridge, who awarded two hundred and fifty pounds damages and forty-five pounds special costs against the headmaster.

Allowing the headmaster's appeal, Lord Justice Scrutton said that there was no evidence of lack of supervision, or that lack of supervision contributed to the accident. A golf ball is not in itself dangerous, and it was not habitual to hit them about the playground.

As was said in this case, no schoolmaster in the world can prevent a naughty boy doing naughty things on some occasions. However carefully duties are performed, it is quite impossible to ensure that accidents will not occur. Where, however, a plaintiff can show that there has been dereliction of duty on the part of a teacher, the defendant's case is seriously weakened.

¹ *Langham v. Wellingborough School Governors and Freyer* (1932)

By the rules of management or articles of government, the whole internal organization, management and discipline of a school are under the control of the head. If, therefore, a teacher fails to perform a duty which the head has prescribed as necessary, he may be condemned for negligence should an accident occur.

XV

CONCERTS AND PLAYS¹

I Licensing of Hall

Stage Plays—Before a hall is used for the public presentation of stage plays, a licence must be granted by the local authority to the owner or lessee of the premises. In the case of a school, the licence is normally taken out by the head. The procedure for dealing with applications for licences varies somewhat from county to county, and some authorities grant only an occasional licence for halls which are used by amateurs. In such cases a fresh application must be made for every production. Others also grant what is called a restricted licence which authorizes the use of the hall for dramatic presentations on not more than a specified number of nights during its currency, normally a year. In some cases the authority issues the licence through its administrative machinery, others require an application to be made through a magistrates' court.

Before a licence is granted, the hall is inspected to ensure that the safety of the public is adequately secured by the provision of sufficient exits, gangways and fire extinguishers. The licence is granted subject to such conditions as may be endorsed upon it, and these must be rigidly observed. The police, the fire and the licensing authorities may enter the hall at any time during a performance to satisfy themselves that the conditions are being observed.

Such an inspection may be very thorough. One fire officer refused to accept an assurance that the scenery had been fire-proofed in accordance with the regulations, and tried the effect of

¹ A useful book for those organizing school productions is Nelson Smith *The Business Side of the Amateur Theatre* (Macdonald & Evans, 1953)

his cigarette lighter on some flimsy and combustible looking flies. They stood up to the test but, with only forty minutes to go before the curtain rang up on the first performance, it is not difficult to imagine what the effect would have been if they had not been treated.

The maximum penalty for keeping a building for the public performance of stage plays without a licence is twenty pounds for every day on which the building is so used.

Music and Dancing—The stage play licence does not cover the use of the building for music and dancing, for which a separate licence is required. Similarly, a music and dancing licence does not authorize the public presentation of stage plays.

Where annual licences are obtained for these purposes, it is advisable to apply for them as a matter of routine at the same time each year. This avoids the possibility of the application being overlooked immediately before a performance.

2 Royalties on Stage Plays

It is a condition of the performance of most stage plays in which copyright¹ still subsists, that a fee known as a royalty should be paid to the author. This is usually done through his agents. Occasionally copyright plays may be produced without royalties being payable, in which case it is usually necessary to insert a note on the programme.

Royalties must be paid in advance, and a licence is then issued for the performance. Authors are sometimes asked to waive the fees due to them for the production of their plays, particularly when they are being presented on behalf of charity. Unless there is a note in the printed copies to the effect that the playwright is prepared to do this in particular circumstances, such requests are grossly unfair. No author wishes to appear ungenerous, but royalties are the due reward which a writer receives for his work, and at least he should be allowed to choose for himself the charities to which he wishes to subscribe.

In some cases, even when royalties are paid, it may be a condi-

¹ See page 209

tion that an announcement appears in all printed matter stating that the play is produced by arrangement with a particular agent. Failure to observe the conditions of presentation may result in action being taken against the school.

3 The Performing Right Society

Under the Copyright Acts, the performance of copyright musical matter is subject to a fee similar in nature to the stage play royalty. Most composers and music publishers belong to the Performing Right Society which acts as their agent and collects their fees. Schools affiliated to the Music Masters' Association of the Incorporated Society of Musicians may take out an annual licence covering all performances for a very low fee. In other cases the form should be obtained from the Society,¹ and when this has been completed the performer will be notified of the fee to be paid. Failure to ensure that these formalities have been completed, at least a week before the performance, will result in action by the Society.

Individual application is not necessary if the proprietor of the hall has an annual licence, or the local education authority has a similar arrangement. In such cases, a return should be made on the appropriate form to the licensee, who will forward it to the Society which then makes arrangements for the composer and publisher to receive their fees.

The Performing Right Society does not make a charge for performances in churches during religious worship, or at competitive musical festivals. Fees are, however, payable in respect of winners' or other concerts at the end of such festivals.

4 Gramophone Records

The copyright in gramophone records is vested in the manufacturer, and the agent for the collection of fees is Phonographic Performances, Ltd, from whom licences can be obtained.² Such licences

¹ The Performing Right Society, Ltd, Copyright House, 33 Margaret Street, London, W 1

² Phonographic Performances, Ltd, 144 Wigmore Street, London, W 1

may be annual or occasional, but they are granted only to individuals or societies, and not to the owner of a hall to cover all users

This licence covers merely the mechanical reproduction of the music, and does not extend to the music itself. A separate fee in respect of the music may be payable to the Performing Right Society under the conditions noted in the preceding section.

5 Broadcast Music

It is an offence under the Copyright Acts to make records of broadcasts, or films or records of telecasts, otherwise than for private purposes, without the prior approval of the broadcasting authority. Neither may a telecast be shown in public to a paying audience. If, for some particular reason, it is wished to do this, it is essential to obtain permission in advance from the broadcasting authority, the owners of any copyright material and the performers taking part.

6 Private Performances

The private performance of a copyright play by a school company to an audience composed *entirely* of members of the school is not an infringement of copyright.¹ The admission of one member of the public however, and for this purpose parents, unless they are directly connected with the school organization, are treated as members of the public, would render the school liable in damages. The point at issue here is that the author's rights might be injured if such a person, because he had seen the play at the school, failed to go to a performance at a theatre where royalties are paid.

In all cases of doubt about the nature of a private performance, it is advisable to consult the author or his agents in advance

7 Infringement of Copyright

The law of copyright is dealt with generally in a later chapter.² In connection with plays and concerts it should be noted that

¹ Copyright Act, 1956, s. 41

² See page 209

whilst it is not an infringement to write a short extract on the blackboard for teaching purposes, it is illegal to duplicate copyright material or to reproduce substantial portions, *e.g.* parts for plays, so that the purchase of copies becomes unnecessary.

8 Original Plays

No stage play may be presented publicly unless it has been licensed by the Lord Chamberlain.¹ If an original play is to be produced, it is therefore necessary to submit the full script, with the appropriate fee, at least seven days before the performance.² The licence is granted to the manager of the theatre or hall where the first production will take place, and not to the author. Once a play has been licensed, it may be produced anywhere. It may not, however, be amended until it has been re-read and re-licensed.

Plays must be typewritten, and the copies submitted to the Lord Chamberlain are not returnable. The date of the first performance and the name of the theatre or hall, which must be licensed for the production of stage plays, must be given in the application.

For this purpose a public performance is 'every case in which any money or other reward shall be taken or charged directly or indirectly, or in which the purchase of an article is made a condition for the admission of any person into the theatre to see any stage play, and also in every case in which any stage play shall be acted or presented in any house, room or place in which distilled or fermented excisable liquor shall be sold'.³

Failure to comply with these requirements renders all offenders—author, composer, manager, producer and actors—liable to a maximum fine of fifty pounds. In addition, the magistrates may suspend or revoke the stage play licence for the building.

¹ A stage play includes every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime or other entertainment of the stage, or any part thereof—Theatres Act, 1843, s. 23

² Plays should be sent to The Comptroller, The Lord Chamberlain's Office, St James's Palace, London, S W 1

³ Theatres Act, 1843, s. 16

9 Performances by Children

The law relating to public performances by children has already been dealt with in connection with the employment of children and young persons.¹

10 Entertainments Duty

The Finance Act, 1957, abolished entertainments duty in respect of the living theatre, and thereby removed one of the biggest pitfalls from the path of business managers of amateur dramatic societies

¹ See pages 113-114

XVI

IN CONFIDENCE

1 General

In the course of their duties, teachers collect a mass of confidential information of a widely varied character. On professional, as well as on legal, grounds it is vital that they should not abuse the confidence thus reposed in them.

Some of these items will concern the work of their employers, as it is often necessary for a local education authority to take the advice of the schools, and particularly of the heads. Not infrequently this consultation is for the benefit of the profession, and the inevitable result of a breach of confidence would be a tendency to withdraw similar confidences in the future.

Most confidential information, however, relates to pupils, and through it teachers learn a great deal about the history, character and homes of the children. It is grossly unfair to the children that such knowledge should be revealed, except where there is a duty laid upon the teacher to do so. There may, also, be occasions when information concerning colleagues should not be given, except under necessity of duty. The law relating to defamation of character may sometimes be involved, and it is desirable that teachers should know something of this subject.

2 Libel and Slander

Defamation of character is the publication of matter which may bring a person into the hatred, contempt or ridicule of other reasonable individuals, or which may cause him to be shunned by such people. It may take two forms, according to the permanence of its nature, spoken defamation being known as slander, whilst the more permanent forms, as, for example, written words, are

known as libel. Defamation by broadcasting, although the words are spoken, is now statutorily libel.¹

Where the defamation is transient in nature, as in spoken words or by gesture, it is slanderous and is a civil as distinct from a criminal matter. To bring a successful action, the person defamed must prove 'special damages', that is, some actual pecuniary loss which is capable of valuation. It is not sufficient for the plaintiff to establish a risk of loss, or loss of a kind which cannot be valued, such as the loss of friends or health. There are, however, four classes of slander which are exceptions to this general rule, and which are actionable without proof of special damages:

- (a) an implication that a woman is unchaste;
- (b) an assertion that a person has committed a crime for which he could be imprisoned,
- (c) a statement that a person is suffering from an infectious or contagious disease which would make him unfit for decent society,
- (d) words which would disparage a person in his trade, business, profession or calling, even though the words do not refer directly to his conduct in that capacity.

Defamation of a more permanent character, as in writing, picture, effigy, cinematograph film or gramophone record, is known as libel and may be either a civil or, in certain circumstances, a criminal matter. The offender may be sued for damages by the person affronted, prosecuted by the Crown, or both. Libel becomes criminal if it is gross, often repeated, or likely to lead to a breach of the peace.

It is not a sufficient defence to maintain that there was no intention to defame, or even that the defendant had no knowledge of the plaintiff's existence. If the words might be considered by reasonable persons to refer to the plaintiff, they may be held by the courts to be defamatory. Since 1952, however, some relief has been given to a defendant who has defamed someone innocently, and it is now possible to make an offer of amends. This may include an apology and, perhaps, a notification of the falsity of the

¹ Defamation Act, 1952, s. 1

statement to anyone to whom it has been made. Even if such an offer is not accepted, it will stand a defendant in good stead provided that he makes it as promptly as possible. This course is only open in the case of innocent, as distinct from careless, defamation.

Some years ago, a newspaper published a fanciful article about a motor rally at Dieppe, in which were described the amorous continental adventures of an imaginary Peckham churchwarden named Artemus Jones, 'the life and soul of the party that haunts the casino and turns night into day'. The writer probably thought that he had chosen a sufficiently unusual combination of names to avoid any real person but, unfortunately for him and the publishers, the article came to the attention of a barrister of the same name, who sued for libel. Both the jury and the House of Lords¹ found for the plaintiff. Under the Defamation Act, 1952, it is probable that this would now be a set of circumstances in which an offer of amends would be accepted.

Defamation becomes actionable immediately the offending matter has been published, that is, the words spoken or the document shown to some person other than the complainant, or the spouse of the defamer, but not before. The posting of a libellous postcard is actionable because, even though it is addressed to the person defamed, it may be read by someone else in the course of the post. Several years ago, a schoolmaster took a boy into his private room and spoke to him about his character. The boy told his father, who threatened to sue for slander. Such an action could not succeed, because the words complained of were not overheard by a third party.

No action for defamation can lie when the subject of the matter complained of has consented to its publication.

The truth of the matter complained of is a complete answer to an action for defamation, provided that the truth is complete and an answer to the whole defamation. A further defence is that the matter complained of is fair comment on a matter of public interest. A third line of defence is privilege and, since this might well be a teacher's answer should he be sued for defamation, the question must be considered in some detail

¹ *E. Hulton & Co v Jones* (1910) AC 20

3 Privilege

The law recognizes that, on certain occasions, it is so necessary to be able to speak or write freely, that statements made in these circumstances are privileged and not actionable for defamation.

Privilege is of two kinds, absolute and qualified. Absolute privilege is restricted to a limited class of speeches and documents and, within that class, the speaker or writer is protected even if the statements were made maliciously. It applies only to speeches in Parliament, reports published by order of either House, proceedings in court, fair and accurate contemporaneous newspaper accounts of court proceedings,¹ and communications between officers of state in the course of their duty.

Qualified privilege covers reports made, whether written or spoken, in the execution of a public or private duty, provided that they are made without malice, that is, absence of right motive. This defence may be used, therefore, in the case of testimonials and references, reports on children to parents, and reports made by teachers to the courts or youth employment officers. In the example quoted above, where a schoolmaster rebuked a boy,² he might have reported his conversation with the boy to the headmaster. Had the boy's father then taken action on the ground of publication, the defence could have maintained that it is a schoolmaster's duty to acquaint his head with certain facts about the boys in his care and that the occasion was privileged, since the schoolmaster had the boy's welfare at heart and the report could not, therefore, be construed as malicious.

In order to claim privilege, it is necessary for the person making the statement to believe, at the time he makes it, that the substance of what he says is true. To make a defamatory statement knowing it to be false, is patently malicious and unworthy of the protection of such a defence.

The second master of a school reported the drunkenness of a

¹ The Judicial Proceedings (Regulation of Reports) Act, 1926, has removed certain details of matrimonial causes and indecent matters arising in court proceedings from the protection of privilege.

² See page 191.

colleague to the headmaster. Lord Chief Justice Cockburn¹ held that the occasion was privileged but, since the report was exaggerated, he remitted the case to the jury for consideration of damages. The plaintiff was awarded forty shillings.

4 Teachers and Defamation

The law of defamation may affect teachers in two ways. From time to time, slanderous statements are made about teachers, most of these issue from parents in the heat of anger but, where professional damage could follow, a teacher may consider taking action in the courts. He cannot be too strongly urged to consult his professional association before doing so—and to abide by its advice. An ill-considered and hasty legal action may well do him more harm in the long run, professionally as well as financially, than he would suffer if he swallowed his pride and left the matter alone. If the circumstances warrant it, the association's solicitor will send a warning letter or, in some cases, the local education authority may be prepared to do this.

Letters about teachers written by parents to the local education authority are probably privileged, unless malice is proved. A successful action² was brought by the headmaster and headmistress of a school, following a 'round robin' sent to the authority by a number of people, some of them neither ratepayers nor parents of pupils in the school. The letter complained of the school's treatment of Empire Day, and the fact that the children had not saluted the flag on that occasion. The petition, described by Mr Justice Swift as 'a highly dangerous, cruel document, highly defamatory of the headmaster and headmistress', was held to be malicious, and damages amounting to fifty pounds were awarded.

In another case,³ a subscriber to a school complained to the local education authority that the headmaster's corporal punishment was excessive, and amounted to cruelty. The court held that the occasion was privileged and that the letter was actuated, not by malice, but by a sincere desire to help towards the truth. The

¹ *Hume v Marshall* (1877) 42 JP 136

² *Barraclough v Bellamy and others* (1928), *Tinnes*, 18 July 1928

³ *Ripper v Rate* (1919), *Times*, 17 January 1919

question of whether there had, or had not, been excessive corporal punishment, was immaterial

At times teachers may have, in the course of their duties, to make comments on the work or character of other persons. When, in the nature of things, such reports must be adverse, it is possible that the issue of defamation may arise in some degree. If the reports are made in the execution of a duty, whether it be public, private, legal or moral, they are protected by qualified privilege, provided that they are not actuated by malice. In such cases, no action can succeed against the teacher. More than a century ago, Mr Justice Wightman, speaking of the importance of letters of character, said,¹ 'It is of importance to the public that characters should be readily given. The servant who applies for the character and the person who is to take him are equally benefited. Indeed, there is no class to whom it is of so much importance that characters should be freely given as honest servants. It is for that reason that the communications are protected.'

So far as teachers are concerned, such reports fall into five main categories: testimonials, references, school reports, reports on teachers, and reports to the juvenile courts. The last group has already been considered in the chapter on 'Children in Trouble',² the others must be treated in some detail.

5 Testimonials

A testimonial is an open letter of recommendation which becomes the property of the person to whom it refers, immediately it is given to him. There is no obligation on a teacher to give a testimonial to a pupil, nor on a head to write one for an assistant. If he does so, however, it must be a fair report. There is no need to assign any reason for refusal and, indeed, it is unwise to do so, but it is advisable to point out that this does not necessarily mean that the testimonial, if given, would therefore be adverse. When a testimonial is refused, it is reasonable to give a certificate of service which states the period and capacity in which the writer has known the applicant.

¹ In *Gardener v. Sible* (1849) 13 QB 796

² See page 168

It should be remembered that actions arising from testimonials may be initiated from either of two directions. The recipient may claim that the document is malicious, and sue for libel. If, on the other hand, it is over-generous and the new employer suffers thereby, he may bring an action for damages.

Testimonials may be withdrawn if, at any time subsequent to their issue, the writer learns of any fact which would materially affect his opinion. This course should be taken only in extreme cases, and after the writer has consulted his professional association, since withdrawal may lead to the threat of an action for defamation.

The practice of giving testimonials to pupils by assistant teachers varies from school to school. In some, the head prefers that the official school testimonial, over his signature, should stand alone because of the embarrassment which may arise when there are marked differences between the head's and an assistant's opinion of a pupil. In such cases it would be unprofessional for an assistant to act contrary to the head's wishes. This is particularly the case when there are certain categories of pupils who are debarred from receiving testimonials. Some heads of grammar schools refuse testimonials to 'premature leavers' who have not completed the course for the Ordinary level of the General Certificate of Education, merely giving a statement to the effect that the person named was a pupil of the school between certain dates. It would be disloyal for an assistant to grant a testimonial in such cases.

A testimonial often speaks most clearly through what is omitted, rather than through what is actually written. For this reason it is important to ensure that no material details are missed. The absence of a reference to discipline in a teacher's testimonial is a case in point, and may—though by no means necessarily—mean that the holder is a poor disciplinarian. Since testimonials are open documents, they tend to refer to the strengths of those on whose behalf they are written, and to omit any mention of weaknesses. It is open to a teacher who has received a testimonial which does not cover such a detail to ask for its inclusion, but he can hardly then complain if the reference is uncomplimentary.

In selecting those who will be asked to write testimonials for them, teachers should remember that appointing bodies expect to see an up to-date recommendation from the head under whom they are serving at the time of the application. Local education authorities will often write for a confidential statement if there is no testimonial, even though the head may not be named among the referees. Those who feel diffident about their head's reaction to a request for a testimonial should remember that it is likely to be far less favourable if the first news he has that one of his staff is on the wing comes through an enquiry from another school.

It is always useful to include testimonials from people whose names or positions carry weight, *if the candidate is really well-known to them*, but a sound testimonial from someone relatively unknown will do the candidate far more good than a vague statement by some eminent individual who has manifestly met the applicant casually and infrequently.

A testimonial given to a serving teacher should contain some reference to such of the following points as are applicable

(a) the professional relationship between the writer and the subject, and the period for which they have been known to each other,

(b) the work done by the teacher in the school,

(c) an assessment of the quality of this work, of the teacher's relationships with children, colleagues and parents, including a reference to the teacher's discipline,

(d) a note on any out-of-school activities connected with the school and, if of some importance, in the neighbourhood generally,

(e) an assessment of the teacher's character and general suitability for the profession,

(f) an expression of regret (if this is so!) that the teacher is seeking another appointment, and an offer to answer any specific questions.

It is sometimes thought that this final offer is designed by an unscrupulous head to give him an opportunity of 'playing down' what is written in the testimonial, but this is not so and, indeed,

the reverse is often the case. It should be remembered that a testimonial may be used for a considerable number of applications; further enquiries may enable the head to make a particularly strong recommendation in view of the specific requirements of a particular appointment.

The owner should not part with the original of a testimonial, as some authorities do not return documents enclosed with applications; in any case there is always a risk of loss in the post. A type-written or duplicated copy should be forwarded, and this must be an exact copy, without addition or omission. The original should be taken to any interview in order that it may be compared with the copy if the appointing body wishes to do so.

Under the Servants Characters Act, 1792, a candidate 'offering himself as a servant with a false certificate of character' is liable to a fine of twenty pounds for each offence.

6 References

References are confidential letters of recommendation, and the subject should not be allowed to learn anything of their contents. They remain the property of the employer. In the nature of things they may be much more frank and detailed than testimonials, but they also must be fair and without malice. When the writer of a testimonial is also asked for a reference, he should take care that the two are not inconsistent; a brilliant testimonial followed by a mediocre reference reflects more clearly on the character of the writer and his inability to judge that of others, than on the capabilities of the person about whom he is writing.

Some employers ask for a reference when they have made an offer of employment to a candidate. If the referee knows this to be so, he should send a courteous note explaining that it is not his practice to give references in such circumstances, since an adverse report might lead to a withdrawal of the offer (or to dismissal, if the employee has started work) and a consequent action for defamation of character. He may add a certificate of attendance (in the case of pupils) or of service (in the case of staff) and, if able to do so, a statement that the candidate's conduct was satisfactory.

When a head is called upon to reply to categorical questions

about a pupil and the answer must be adverse, it is often worthwhile to see the child's parent before doing so, in order to explain the circumstances.

References should be addressed personally to the enquirer, and the envelope should be marked 'Private and Confidential'.

As a general rule, references should follow the broad lines of a testimonial, but they may be biased to show to the best advantage the candidate's suitability for the post in question. Unlike testimonials, it is practically impossible to withdraw them for, whereas a testimonial may be used for successive applications over a period of some years, a reference is usually acted upon finally within a matter of weeks, or even days, from the time of writing.

Enquiries are sometimes made by telephone. Exceptional care should be taken in answering questions in this way, particularly if there is a chance that the call may be intercepted. Adverse answers should not be given over the telephone, the enquirer being advised that a reply will be sent in writing.

When it is the practice to return copy testimonials to unsuccessful candidates, care should be taken to see that references are not inadvertently enclosed. The writer once received a request from a candidate for the return of references on the ground that she did not wish to trouble her referees again. To have returned the documents under such circumstances would have been a sheer breach of confidence.

Teachers proposing to use a person's name for reference purposes should remember that it is exceedingly discourteous to do so without previous enquiry as to the willingness of that person so to act. When entering the particulars of a referee on the application form, it is important to spell the sponsor's name correctly and to add his status for the guidance of the employer. It is surprising how careless teachers are about details of this kind. The author has received applications from avowed Churchmen who have made complete havoc of the niceties of ecclesiastical nomenclature and, on one occasion, having taken up a reference he received an acid comment on the spelling of the referee's name which was, apparently, not that adopted by the candidate. Carelessness in an important document such as an application is not indicative of the

kind of attitude which heads are looking for amongst members of their staff.

7 School Terminal Reports

Some firms make a practice of writing to schools to ask for copies of the recent terminal reports on a pupil who has applied to them for a post.

Such reports are confidential as between the head of the school and the parent of the pupil. The nature of the comments and the standards is such that they are not readily comparable between schools, or even between different classes in the same school. They are thus likely to present a misleading picture to an employer who does not really understand their true purpose. A note explaining this will sometimes be sufficient, but if the firm is pressing the head should consult his professional association.

If, in the end, the only chance of a successful candidature is the production of the report, this is the responsibility of the parent. Under no circumstances should the head forward the document, and he should advise any parent who proposes to do so of its exact nature.

8 Reports on Teachers

It is unprofessional for a teacher to make a report on another teacher without first acquainting him with the nature of the report and, if it be written, allowing him to read it before transmission. In the case of a written report, the teacher should be asked to sign a statement that he has read the report and noted its contents.

This does not apply to confidential references concerned with appointments, but it does include reports on teachers on probation, whether such reports be satisfactory or not. Teachers who discover that such a report has been made without their knowledge may consider it desirable to approach their professional associations.

The strictly legal position may be somewhat different from the professional ethic. A headmistress wrote to the local education authority, requesting the transfer of one of her staff for the benefit

of the school. The judge held¹ that the occasion was privileged, provided that the letter had been written without malice.

It is also the practice for Her Majesty's Inspectors not to include any adverse comments in a written report without first acquainting the teacher concerned with the substance of those remarks.

9 Addresses of Staff and Pupils

The addresses of staff and pupils should not be divulged to any outside person by a teacher. If asked by a police officer, in the course of his duty, for the address of a child, the head should consult his local education authority before giving it. If the officer objects, he should give the information, note the objection in the school annals, and inform the authority.

When persons unconnected with the school organization request the addresses of members or former members of the staff, they should be instructed to write to the teacher at the school so that the letter may be forwarded.

10 Press, Radio and Television

Some local education authorities have a clause in their staff code which restricts the activity of their servants in making public statements on any work which is the concern of the authority. When such a clause exists, it is implied in the teacher's agreement.

Quite apart from this rule, it is inadvisable for teachers to give to the press any information which they may have acquired through their employment, whenever such information may cause embarrassment or distress to anyone, whether employer, pupil, parent or colleague. Most authorities allow certain non-controversial news items to be disseminated by the schools. It is, for example, usually permitted to release the news that the mayor will present the prizes at the annual speech day, but it is extremely risky to admit to the press, even when the editorial staff have wind of the fact, that a pupil has absconded from home, or that Such-

¹ In *Reeve v Widderton* (1927), *Daily Telegraph*, 16 June 1927

and-Such Primary School is the only one in the town to have secured grammar school places in the eleven-plus examination.

If an authority requires its staff to dissociate their books or articles from the views of the authority, and to make it clear that the work is purely individual, care should be taken to see that this is done. The statement at the beginning of this book is an example.

XVII

MISCELLANEOUS

1 Official Visitors

All schools today receive a large number of official visitors. Many of them are concerned only with the head, others will also wish to meet the assistant staff.

Managers or governors may visit the school from time to time in order to see for themselves what is happening in the establishment for which they are responsible.¹ The periodic visits of Her Majesty's Inspectors (and the penalties for obstructing them) have already been noticed,² and there are also callers who are concerned with such matters as audit, buildings and equipment.

In most cases there is no doubt about the identity of the visitor, but it is not unknown for unauthorized persons to attempt to gain access to schools by pretending to have official business there. There is no discourtesy in asking an unknown person to produce evidence of his authority in case of doubt. This is particularly important if the visitor seeks any contact with the pupils.

From time to time, specially invited guests may come to a school to give lectures to children, as the principal speaker at a prizegiving, or on other similar occasions. Such visitors must be treated with due honour, and it is a good practice to keep a visitors' book to be signed on such occasions.

The increase in the number of ancillary services has produced

¹ My own managers draw up annually a rota on which, each month, one of them becomes the school's *Interim Visitor*. I find these visits stimulating and useful and since the *Interim Visitor* is always courteous enough to ring up in advance to ensure that the visit is convenient, the scheme works well and has much to commend it.

² See page 23

a corresponding rise in the number of people who call at the schools from time to time. The medical staff, meals staff, youth organizer, welfare officer, and youth employment officer all pay more or less frequent visits. If children are on probation, it is not uncommon for the probation officers to look in from time to time for an up-to-date progress report on the children in whom they are interested.

2 Other Visitors

Unauthorized persons remain on the school premises as licensees¹ and, once the head's licence has been withdrawn, which can be done by asking them to leave, they become trespassers if they remain. If such visitors refuse to go, the request should be repeated, with a warning that the police will be called if necessary. If he deems it to be necessary, the head or his deputy may remove an intruder, but he may use no more force than is necessary to do so. It is far better, if possible, to wait for the police and ask them to remove the unwelcome guest, so that their evidence is available if required.

When unauthorized persons have entered the school on false pretences, and particularly when they have sought contact with the children, the local education authority should be informed immediately so that appropriate steps may be taken.

Parents are by far the most frequent visitors to a school, and they come for a wide variety of reasons. Generally speaking, this is to be welcomed, for it tends to produce a friendly atmosphere between staff and parents. It must, however, be borne in mind that parents have no right of entry to a school and that their presence is entirely at the discretion of the head. A parent, just as much as any other visitor, becomes a trespasser immediately that leave is withdrawn.

Under no circumstances should any parent be allowed to abuse a member of the staff, and such conduct should be reported at once to the local education authority. If an assault is threatened, the teacher may also wish to consult his professional association.

¹ See page 152

Some local education authorities leave the admission of commercial travellers to the heads of schools, others do not permit such visits. The practice required by the authority should be followed. It is inadvisable to admit commercial travellers who wish to sell articles to the children, that is, to use the school as a market, unless it is definitely known that the authority has given permission in a particular instance. Representatives of educational publishers displaying text-books and other works for the benefit of the staff are in a somewhat different category since they do not take orders. All local education authorities except the London County Council now permit them, under licence, to visit their schools.

The question of accidents to visitors has already been noticed.¹

3 Complaints by Neighbours

Much of what has already been said about other visitors applies to visits by persons who come to a school to make complaints about pupils. Such complaints should be received courteously, with a promise that they will be investigated. The names and addresses of pupils should not be given to the complainant as, in a case of mistaken identity, there may be serious results from such action. Under no circumstances should the visitor be allowed to hold an identification parade unless the local education authority has given permission for this to be done because of the gravity of the complaint in a particular case.

Complaints by neighbours that their property has been damaged by pupils should be referred to the authority's legal department. Care should be taken not to say anything which could be construed as an admission of liability in dealing with a complaint of this nature.

4 Homework

In sending children to school, parents delegate a portion of their authority to the schoolmaster, and are assumed to assent to all

¹ See page 152

reasonable school rules. It is probable that the courts would decide, at least in the case of pupils of secondary school age, that a requirement that a child should do a moderate amount of homework is a reasonable requirement and that, where such a rule exists, a parent cannot order his child to break it. A head proposing to introduce homework in a school where it has not been the practice to require it would be well advised to seek the support of the governors (in the case of an aided secondary school) or the local education authority (in all other maintained schools), as the body responsible for the secular instruction.

5 Loss of Property

A local education authority will not accept liability for the loss of personal property in a school, whether by pupils or staff. It is desirable to display notices to this effect at suitable points. Teachers who have personal items of value in a school are advised to insure themselves against possible loss.

If a teacher takes charge of property on behalf of a pupil, he may be liable in damages if he fails to exercise reasonable care in its custody. In such cases, reasonable care would amount to the degree of care which a prudent person would exercise with regard to his own property.

6 School Rules

In cases where negligence is imputed against the school, the defence is materially assisted if it can be proved that a school rule existed forbidding the conduct by which the plaintiff contributed to his accident or loss.

There is no need for the school rules to be codified or circulated to parents, although both these cases may be deemed desirable, especially when rules are of an unusual character. It is generally assumed that parents, in sending their children to a particular school, have implicitly accepted its rules, even though they have not seen them.

It is not possible legally to compel pupils at a maintained school

to wear school uniform, and the only pressure that can be brought to bear in this direction is through the medium of the school's *esprit de corps*.

7 Parent-Teacher Associations

Many schools have parent-teacher associations and, properly organized, they can do much to promote a good relationship between the groups they represent. Many such associations have been of tremendous benefit to the schools to which they are attached, and have often raised funds for equipment and journeys which would not otherwise have been possible.

It should, however, be clearly understood that, in a maintained school, such a body has no executive power. Under no circumstances can it usurp the functions of the managers or governors and the head as laid down in the rules of management or articles of government.

8 Lotteries and Money-raising Activities

Consideration of this matter falls into two distinct parts. School voluntary funds are raised in a number of ways, and some schools have used raffles as such a means. It is for the school to decide whether such a method is consistent with the principles which should be inculcated in the young.

If it is felt that such means are permissible morally, care must be taken to ensure that the method employed is permissible legally. Raffles must be purely incidental to some other entertainment and the whole of the proceeds, after deducting expenses and a sum not exceeding ten pounds for prizes, must be given to a purpose other than private profit. Money prizes are forbidden. All the tickets must be sold, and the result declared, at the entertainment to which the raffle is incidental.

The law relating to street collections, which includes door-to-door collections, requires that permission must be obtained from the police before such a collection is made. All collectors must

carry an authority signed by a responsible person, and no person under the age of sixteen may act as a collector.

In all money-raising activities, care must be taken to see that the law relating to the employment of children is not broken.¹

9 Police Investigations

From time to time, police officers visit schools in connection with investigations which they are conducting into alleged offences. It is an offence to obstruct a police officer in the course of his duty, but the head of a school also has a duty to his pupils and their parents.

If the police wish to hold an identity parade, the local authority should be notified by telephone and asked for instructions.

In cases where the police wish to interview a particular child, the pupil may be asked whether he has any objection to being questioned in the absence of his parents. If so, the police should be asked to defer the examination until they have an opportunity of conducting it in the parents' presence. If they refuse to wait, or if the child has no objection, the head should be present *in loco parentis* throughout the interview, and may give the child such counsel as he would give to his own child in similar circumstances. The matter should be recorded in the school annals, and the local education authority informed. If the head is a man, and a girl is being interrogated, a mistress should also be present. The head should not allow a pupil to be searched without a warrant for this purpose.

If, on arrival, the police are armed with a warrant either for search or arrest, the head must allow it to be executed, to resist would be obstruction.

The question of divulging the addresses of pupils to the police, or others, has already been noticed.²

10 Radio Licences

One licence taken out by the school covers the use of any number of sets in the same block of buildings, provided they are installed

¹ See pages 112-115

² See pages 200 and 204

for the use of the licensee or the general use of the pupils. It does not cover private sets owned and used by employees

11 Tuck Shop

A tuck shop is not taxable on its profits so long as it complies with the conditions of mutual trading, but it may be assessed in respect of investment income. If the investment belongs to the school, and the profit is used only for the benefit of the school, tax will possibly be avoided and it is therefore desirable to create some form of trust by which the investments are automatically handed over to the school.

12 School Crests

It is incorrect to talk about school badges, as is commonly done, as no school can have an official badge. Badges are simpler and more primitive than crests and arms, they are not mounted on a shield as are arms, nor do they surmount a wreath as do crests. Officially, a school can have only arms alone, or arms and a crest.

The right to bear arms can be obtained only by letters patent which are issued by the Kings of Arms after obtaining a warrant from the Earl Marshal in respect of each grant. Under certain circumstances, one of the Officers of Arms may grant arms under the authority of an Act of Parliament, or by letters patent under the Great Seal, or by royal licence under the Privy Seal.

The fees for a grant are £131 5s for private persons, or £157 10s for corporate bodies and, at the discretion of the Kings of Arms, certain non-corporate associations of suitable standing. There is now no Inland Revenue tax on armorial bearings, and the licence for the use of arms has been abolished.

The High Court of Chivalry was revived in 1955,¹ and it is possible that further cases will be brought before this tribunal as

¹ It was claimed in this case that the Court, which had not met for a considerable period, had no jurisdiction except over arms carried abroad in war, or in tournaments in this country. Lord Goddard said, 'Once it is established that this Court exists there is no way, so far as I know, of putting an end to it save by Act of Parliament.'

time goes by. In the case in question,¹ the Earl Marshal sat with Lord Chief Justice Goddard as his Surrogate and Assessor. The Manchester Palace of Varieties was fined three hundred pounds for an offence against the laws of arms by infringing the right of the Manchester Corporation by using arms to which the Palace had no right. Any interested member of the public could institute a criminal case where arms have been devised and assumed without authority, the 'Cause of Action' being cited as *The Office of the Judge v. The Offender*.

It should be borne in mind that many of the devices in use by schools are incorrect from an heraldic point of view, and the Kings of Arms would not be prepared to make a grant in respect of them until they had been regularized.

In general, arms can be granted only to corporate bodies with perpetual succession, but schools are an exception to this rule, and a grant may be made to the owners or trustees for the use of the school.

13 School Magazines

Cases arise occasionally where a pupil submits previously published work as an original contribution to a school magazine. The editor should take every possible care to ensure that plagiarism of this kind does not slip past him. Under the Copyright Acts, the British Museum is entitled to be supplied with a copy of every book published in this country, and it has been held that this right includes school magazines. Such a copy must be delivered within one month after publication.²

14 The Law of Copyright

The Copyright Act, 1956, came into force on 1 June 1957. Under this Act, the whole of the 1911 Act has been repealed, with the exception of three sections of which one is that dealing with the delivery of copies of books to the British Museum.

The new Act makes important provisions regarding the use of

¹ *Manchester Corporation v Manchester Palace of Varieties* (1955)
1 All E.R. 387

² Copyright Act, 1911, s. 15

copyright material for educational purposes. It is not an infringement either for teachers or pupils to reproduce or adapt copyright material in the course of instruction, so long as this is not done by a duplicating process. Neither is it an infringement to include such material in an examination question or answer. It is however illegal to duplicate, say, a copyright poem for issue to a class, or the parts of a copyright play in such a form that it becomes unnecessary to purchase copies.

It is not an infringement to perform a copyright literary, dramatic or musical work in class or otherwise in the course of the activities of a school, provided that both performers and audience are teachers or pupils of the school. Any other members of the audience must be directly connected with the school, and a person is not held to be so merely because he is the parent of a pupil. The same provision extends to sound recordings, cinematograph films and television broadcasts.

In addition to these educational exceptions, there are certain other occasions when copyright material may be reproduced including what the Act describes as 'fair dealing' for the purposes of criticism, review, or reporting current events. In the last instance there must be an acknowledgement of the source of the material. Subject to certain conditions, it is permissible to use short extracts in a collection intended for use in schools, and so described in its title.

Some copyright works carry a statement that they may be freely reproduced or, in the case of plays, performed merely by an acknowledgement of the source. This may be taken as a general licence, subject to the conditions stated.

In this country copyright extends to literary, dramatic, musical and artistic works of which the author was a 'qualified person' and, in general, subsists for fifty years after his death. Copyright is normally the property of the author. It is not now contingent upon publication or any form of registration. Thus, for example, the copyright of a book exists from the moment that the author commits his ideas to paper. The protection afforded by copyright applies to the actual form of the work and there is no copyright in ideas, in facts or in titles.

Teachers who wish to reproduce material which they may have reasonable grounds to believe to be subject to copyright should make careful enquiries before doing so. Ignorance is no excuse for breaking the law and, in the case of published material, an enquiry to the publishers is the best way of discovering whether the work concerned is still protected and, if so, the name of the owner of the copyright, from whom it will be possible to secure details of the terms and conditions upon which he will allow his work to be used.

APPENDIX I

ADDRESSES OF PROFESSIONAL ASSOCIATIONS

The national associations whose names are included in this list are concerned with the professional status of their members. Those which are purely academic in character have not been noted.

National Union of Teachers

Hamilton House, Mabledon Place, London, W C.1

This is the largest of the associations, and comprises in its membership teachers in every kind of school and college. The interests of the various groups are safeguarded by the formation of sections within the union

Joint Committee of the Four Secondary Associations

29 Gordon Square, London, W C.1

This committee co-ordinates the work of the four associations of teachers in secondary schools, and deals with matters which are common to them all. Usually known as the 'Joint Four', it has no individual membership, the teachers who are associated with it being members of one of the constituent bodies which all have their offices at this address

INCORPORATED ASSOCIATION OF HEADMASTERS,
ASSOCIATION OF HEADMISTRESSES,
INCORPORATED ASSOCIATION OF ASSISTANT MASTERS,
ASSISTANT MISTRESSES ASSOCIATION (INCORPORATED)

The Headmasters' Conference

29 Gordon Square, London, W C.1

Membership of this body is limited to Headmasters of schools

which fulfil certain conditions. Generally speaking, the school must be independent or direct-grant, there must be a certain number of boys over the age of thirteen, a considerable amount of post-certificate work must be undertaken, and the school's record of entry to the universities must satisfy the conditions laid down by the Conference. Independent schools conducted for private profit are not eligible. Membership of the Conference is usually held to entitle the school to describe itself as a 'public school'.

National Association of Head Teachers

Charter House, Claremont Road, Surbiton, Surrey.

This is an association of heads in all kinds of schools.

Joint Council of Heads

Charter House, Claremont Road, Surbiton, Surrey.

The committee deals with matters of common interest to members of the Incorporated Association of Headmasters, the Association of Headmistresses and the National Association of Head Teachers.

National Union of Women Teachers

41 Cromwell Road, London, S W 7.

This body aims at improving the status of women within the profession.

National Association of Schoolmasters

59 Gordon Square, London, W C.1.

This is the men's counterpart of the last-named organization. A distinctive feature of its policy has been implacable resistance to the policy of equal pay for women.

National Federation of Class Teachers

40 Athelstan Road, Southampton.

National Association of Teachers in (Selective) Central Schools

Levens, Gilbert Road, Hale, Cheshire.

Association of Teachers in Technical Institutions
Hamilton House, Mabledon Place, London, W.C.1.

Faculty of Teachers in Commerce
179 Barnsley Road, Wombwell, Barnsley, Yorkshire, W R.

Incorporated Society of Commercial Teachers
63 Deansgate Arcade, Manchester.

Association of Teachers in Colleges and Departments of Education
53A Brewer Street, London, W.1.

National College of Teachers of the Deaf
Longwill School for the Deaf, Moseley Road, Birmingham, 12.

Association of Principals of Technical Institutions
Dudley and Staffordshire Technical College, Dudley, Worcester-shire.

The Physical Education Association of Great Britain and Northern Ireland
Hamilton House, Bidborough Street, London, W.C.1.

British Association of Organizers and Lecturers in Physical Education
202 Ashby Road, Loughborough, Leicestershire.

National Association of Inspectors of Schools and Educational Organizers
South View, Upper Largs, Fife.

INDEPENDENT SCHOOLS

The following bodies are concerned with safeguarding the status of independent schools.

Independent Schools Association Incorporated
Lauriston House, London Lane, Cuckfield, Sussex.

Association of Headmistresses of Recognized Private
Schools

Beresford House, Summerdown Road, Eastbourne, Sussex.

Incorporated Association of Preparatory Schools
31 Melbury Court, London, W 8.

Association of Headmistresses of Preparatory Schools
Moreton Hall, Bury St. Edmunds, Suffolk.

Society of Assistants Teaching in Preparatory Schools
Little Thorns, Gatton Point, Redhill, Surrey.

THE COLLEGE OF PRECEPTORS

2-3 Bloomsbury Square, London, W C.1

The College is not an association in the accepted sense of the word, but membership (which includes the use of the Club Room and Information Room) is open to all who are engaged in the work of education, provided that they possess certain minimum qualifications. Founded in 1846, the College received its Royal Charter in 1849 and, throughout its history, it has shown a high regard for the status of teachers. It conducts diploma examinations, that of Associate (A.C.P.) being equivalent to the standard attained after the normal training college course, whilst the Licentiate (L.C.P.) is equivalent to a first degree in education, and the Fellowship (F.C.P.) to a second degree.

In addition, the College conducts a Certificate examination which is designed for children at the end of the fourth year of a secondary school course, and a Senior Certificate of the standard of the old School Certificate.

APPENDIX II

BIBLIOGRAPHY

I Government Publications

A complete and up-to-date list of Government publications on Education will be found in *Government Publications (Sectional List No 2) Ministry of Education* which is issued periodically. All publications of this nature are obtainable from any bookseller or from Her Majesty's Stationery Office, York House, Kingsway, London, W C.2. A list of publications which are likely to be useful to readers of this book is appended.

Education Act, 1944

Education Act, 1946

Education (Miscellaneous Provisions) Act, 1948

Education (Miscellaneous Provisions) Act, 1953

Physical Training and Recreation Act, 1937

Teachers (Superannuation) Act, 1925

Teachers (Superannuation) Act, 1937

Teachers (Superannuation) (War Service) Act, 1939

Teachers (Superannuation) Act, 1945

Teachers (Superannuation) Act, 1956

Pensions (Increase) Act, 1944

Pensions (Increase) Act, 1952

Pensions (Increase) Act, 1956

National Insurance Act, 1946

School Crossing Patrols Act, 1953

Copyright Act, 1911

Only Sections 15, 34 and 37 of this Act are still in force

Copyright Act, 1956

Diocesan Education Committees Measure, 1943

Diocesan Education Committees Measure, 1943 (Amendments)
Measure, 1951

Schools Grant Regulations, 1951 (S I. 1951, No. 1743)

— *Amending Regulations, No. 3. (S.I. 1952, No. 1815)*

— *Amending Regulations, No. 4. (S I. 1953, No. 1393)*

— *Amending Regulations, No. 5. (S I. 1954, No. 361)*

— *Amending Regulations, No. 6 (S.I. 1955, No. 1040)*

School Health Service and Handicapped Pupils Regulations, 1953.
 (S I. 1953, No. 1156)

— *Amending Regulations (S I. 1954, No. 1389)*

Pupils Registration Regulations, 1956 (S I. 1956, No. 357)

Principles of Government in Maintained Secondary Schools (1944)
 Cmd. 6523

School Records of Individual Development (Circular No. 151,
 18 July 1947)

Supply and Employment of Teachers for Primary and Secondary
Schools (Circular No. 174, 16 June 1948)

Qualified Teachers and Temporary Teachers (Circular No. 284
[Revised], 1 October 1956)

School Registers and Records (Administrative Memorandum No.
 531, 10 May 1956)

Memorandum on Closure of, and Exclusion from School (1953)

Pensioner's Guide to the Pensions (Increase) Act

Salary Scales

Teachers in Primary and Secondary Schools (1956)

Teachers in Establishments for Further Education, including
Technical and Commercial Colleges and Institutes, Arts Colleges
and Schools (1956)

Teaching Staff of Training Colleges (1956)

Teaching Staff of Farm Institutes and Teachers of Agricultural
(including Horticultural) Subjects (1956)

Youth Service Organizers (1956)

Specialist Organizers (1956)

Educational Psychologists (1956)

General Inspectors and Organizers (1956)

The following Reports of the Consultative Committee (before

1945) and the Central Advisory Council (since that date) are available

The Education of the Adolescent (1926)—The Hadow Report

The Primary School (1930)

Secondary Education with Special Reference to Grammar Schools and Technical Schools (1938)—The Spens Report

School and Life (1946)—A first enquiry into the transition from school to independent life

Out of School (1948)

Early Leaving (1954)

The following pamphlets are of particular interest

Youth's Opportunity (Pamphlet No 3, 1946)

Further Education (Pamphlet No 8, 1947)

The New Secondary Education (Pamphlet No 9, 1947)

Citizens Growing Up (Pamphlet No 16, 1949)

The Road to the Sixth Form (Pamphlet No 19, 1951)

Our Changing Schools is an illustrated pamphlet designed to introduce parents to the changes brought about by the 1944 Act. Written by Roger Armsfelt, it was prepared for the Ministry of Education by the Central Office of Information.

2 Other Publications

J L Meilor *The Law* (English Universities Press, 1955) A concise introductory guide to some general aspects of the legal system.

Alexander and Barraclough *County and Voluntary Schools* (Councils and Education Press, 1953) An analysis of sections of the Education Acts, 1944-53 which deals with the provisions of these sections as they affect the administration of different kinds of school

L B Tirrell *The Aided Schools Handbook* (National Society and S P C.K., 1956) A useful commentary on the law relating to, and the work of, these schools by the Director of Religious Education for the Dioceses of London and Southwark. Though intended primarily for managers and governors,

teachers interested in aided schools will find much useful matter here

The Education Committees Year Book (Councils and Education Press) An annual directory of all local education authorities, divisional executives, etc

Clarke Hall and Morrison *The Law Relating to Children* (Butterworth, 5th edition, 1956) The standard work on all aspects of this subject, monumental in its conception and meticulous in its presentation.

T Beven *Negligence in Law* (Sweet and Maxwell, 4th edition, 1928)

G H F Mumford *A Guide to Juvenile Court Law* (Jordan, 3rd edition, 1950) An exceedingly valuable reference book which covers all aspects of the subject and is invaluable when heads have pupils who are in trouble with the courts

A. E. Jones *Juvenile Delinquency and the Law* (Penguin, 1945) This book has been out of print for some time, and recent legislation has rendered parts of it out of date. Its particular value lies in the typical case histories of juvenile delinquents which are extremely well presented, and for these alone it is worth a hunt through the second hand bookshops

J A. F. Watson *The Child and the Magistrate* (Cape, revised edition, 1950) A penetrating book by a former Chairman of the South East London Juvenile Court, again with valuable case material

Punishment in Schools (L.C.C., 1952) A small pamphlet by the Council's inspectorate which has been placed on general sale

The following pamphlets have been produced by the School Journey Association of London, and are invaluable for those planning such events. Free to members, they may be obtained for a small charge by non members from the School Journey Association of London, 23 Southampton Place, London, W.C.1

Types of School Journeys

How to Promote a School Journey—Homeland

How to Promote a Continental School Journey
A School Journey to London

Nelson-Smith: *The Business Side of the Amateur Theatre* (Macdonald and Evans, 1953) A useful hand-book for those concerned with the organization of school plays and concerts.

J C. Powell-Price. *Notes for the Assistance of Governors and Managers of Church Schools* (National Society and S P C.K., 1957) A clear and concise statement of the rights and duties of those responsible for the management of Church schools, written by the former Legal Secretary of the National Society.

INDEX

- Absence
 - pupils, *see* Attendance Control
 - teachers, *see* Leave of Absence
- Academic robes and tax allowance, 74
- Accidents
 - see also* Negligence
 - pupils, 150-2
 - teachers, 61-3, 76, 77-8
 - visitors, 152
- Acts of Parliament. *see* Statutes
- Additional allowance (lump sum), 91
- Admission of pupils
 - control of managers or governors, 100
 - mid term admissions, 118
 - preservation of admission register, 100
 - qualification for admission, 101
 - readmission after expulsion, 102, 104
 - refusal of admission, 100
 - register to be kept, 99, 100-1
 - registered pupil, 101
 - transfers, 106
- Advisory Councils, 23
- Age
 - attainment of, 116-17
 - compulsory school, 116
 - employment of children, 112
 - presumption of, 117
- 'Age, ability and aptitude', 28-9
- Agreed syllabus instruction
 - adoption of, 130-1
 - aided schools, 40, 132
 - Agreed syllabus instruction — *cont*
 - controlled schools, 42, 132
 - county schools, 39, 130-1
 - inspection, 131, 132
 - special agreement schools, 43, 132
- Agreement, Teacher's, 15, 56-58, 157-8, 200-1
- Aided schools
 - correspondent or clerk, 37-8
 - maintenance, 40, 41
 - managers and governors, 39-40
 - religious education, 40, 129-130, 131-2
 - secular instruction, 40
 - teachers, 40-1, 127, 135-6
- All age schools, 32, 35
- Ancillary services, 24
- Annals, School, 99, 100, 108-9, 130
- Annual allowance (pension), 90-91
- Annuities, 92-3
- Apostles' Creed, 130
- Appointment of teachers
 - aided schools, 40-1
 - application for, 54-6, 194-9
 - clergy and ministers, 135-6
 - controlled schools, 42
 - married women, 58
 - religious opinions, 61
 - reserved teachers, 58-9
 - special agreement schools, 43
 - types of appointment, 54
- Approved schools, 162-3, 172, 173
- Approved service, 87

- Area Training Organizations, 46-7
- Arms, School, 208-9
- Articles of Government, 35, 37-8
- Ascension Day, 134
- Assembly *see* Worship
- Atonement, Day of, 134
- Attendance centres, 170
- Attendance control
 avoidance of broken terms, 117
 employment during school hours, 112-13, 121
 enforcement of attendance, 121-3
 further education, 124-5
 infectious illness, 104-5
 medical and dental treatment, 120
 parent's duty to secure attendance, 118-19
 parent's illness, 118
 registers, 99-100, 119-21
 school attendance orders, 123-4
 statutory defences, 118-19
- Authorities, Local education
 county authorities, 38
 divisional administration, 25
 duties agreed syllabuses, 130-1, attendance control, 121-4, education of excluded children, 104, general, 24-5, 28, parents' wishes, 28-9, provision of transport, 119, staffing, 45-6, 50-1
 excepted districts, 25-6
 instruments of management and government, 35
 maintenance of voluntary schools, 41, 42, 43
 management of county schools, 39
- Authorities, Local education —
 cont
 minor authorities, 38-9
 salary negotiations, 67-8
- 'Badges', School, 208-9
- Bathing, 178
- Bilateral schools, 32
- Blood transfusions teachers as donors, 84
- Board schools, 128
- Boarders, 119, 120, 136
- Boarding facilities, Provision of, 33
- Boating, 178, 179-80
- Breakdown allowance, 91-2
- British and Foreign School Society, 128
- British schools, 128
- Broadcast music, Reproduction of, 186
- Broken terms, Avoidance of, 117
- Buildings, School, defined, 40
- Burnham Committees, 67-8
- Burning, Protection against, 148-9
- 'Butler' Act. *see* Education Act, 1944
- Care, Duty of
 see also In loco parentis, Negligence
 after accidents, 150-2
 age, effect of, 145
 bathing and boating, 178
 higher duty of care, 139-40, 142
 physical education, 146-7, 150, 177-8
 playground duty, 176
 schoolmaster's duty, 138-41
 science laboratories, 146
 voluntary duties, 176-7
 warning of danger, 145-6

Care or protection, 167, 172-3

Case law, 16

Cases cited:

Barraclough v. Bellamy & others (1928), 193

Baxter v. Barker (1903), 142

Bell v. Graham (1907), 134

Chilters v. L.C.C. (1916), 144

Cleary v. Booth (1893), 159-160, 161

Cook v. Attock (1955), 160-1

Cracker v. Plymouth Corporation (1906), 40

Cuckson v. Stones (1858), 76

Davies v. Ebbw Vale U.D.C. (1911), 76

Donoghue v. Stevenson (1932), 140-1

Fitzgerald v. Northcote (1865), 164

Foster v. L.C.C. (1927), 145

Gardener v. Slade (1849), 194

Gardner v. Bygrave (1889), 162

Gill v. Leyton Corporation (1933), 64, 157

Hazell v. Jeffs (1955), 157-8, 162

Hudson v. Governors of Rotherham G.S. & Johnson (1938), 153-4

Hulton & Co. v. Jones (1910), 191

Hume v. Marshall (1877), 193

Hutt v. Governors of Haileybury College (1888), 155, 161

Jeffery v. L.C.C. (1954), 138-139

Jenkins v. Howells (1949), 118

Jones & another v. L.C.C. (1932), 144

Jones v. University of London (1922), 65

Cases cited:—*cont.*

Lamb v. Jefferies (1956), 60

Langham v. Wellingborough School Governors & Freyer (1932), 181

Lewis v. Carmarthenshire C.C. (1955), 17, 147

Lynch v. Nurdin (1841), 141

Maloney v. St. Helens Industrial Co-operative Society (1932), 76

Manchester Corporation v. Manchester Palace of Varieties (1955), 208-9

Mansell v. Griffin (1908), 155, 156, 157, 161

Marshall v. Graham (1907), 134

Marston v. St. George's Hospital, Hyde Park Corner (1956), 140

Martin v. Eccles Corporation (1919), 83

Powell v. Lee (1908), 56

Price & others v. Sunderland C.B.C. (1956), 175

R. v. Dennis (1954), 162

R. v. Hopley (1860), 158, 161-162

R. v. Newport (Salop) Justices (1929), 160

R. v. Winterset (1783), 76

Reeve v. Widderton (1927), 199-200

Ripper v. Rate (1919), 193-4

Roberts v. Hopwood (1925), 64

Savory v. Shurey (1918), 116-117

Scorgie v. Lawrie (1883), 158

Shaw & others v. L.C.C. & another (1934), 150

Shaxted v. Ward (1954), 119

Smerkinch v. Newport Corporation (1912), 145

Cases cited —*cont.*

Smith v Martin & Hull Corporation (1911), 142-3

Spiers v. Warrington Corporation (1954), 104, 119

Watt v. Kesteven C C (1955), 29

Watts v. L C C. (1932), 55

Webb v. Essex C C. (1954), 146-7

Williams v. Eady (1893), 139

Williams v Glamorgan C C (1916), 64

Woodley v. Metropolitan District Railway Co (1877), 62

Catechism, forbidden in county schools, 130

Central schools, 31-2

'Centres', 120

Chief Education Officer, 24-5

Choice of school, 28-9

Churches, Use of.

religious instruction, 132

worship, 129-30

Church schools *see* Aided Schools, Controlled Schools, Special Agreement Schools, Voluntary Schools

Classes, Size of

ordinary schools, 107-8

special schools, 111

Clergy

ineligibility as regular teachers, 135-6

visits to schools, 130, 131, 136

Clerk to Governors, 35, 37-8, 103

Closure of schools

emergencies, 108

entry in School Annals, 109

epidemics, 105

holidays, 38, 106

notification of, 108

Collective certificate (passport), 179

College attendance notices, 117, 124-5

Commencement of proceedings, 150

Commercial courses, 31

Commercial travellers, 204

Common employment, 62

Complaints

neighbours, 204

parents, 16-17, 151-2, 156-7,

158-9, 193-4, 203

Comprehensive schools, 32

Compulsory school age, 116-17

Concerts

broadcast music, 186

children as performers, 113-

114

gramophone records, 185-6

infringement of copyright, 186-7

licensing of hall, 184

Performing Right Society, 185

private performances, 186

Conferences, Leave for, 84

Confidantes

addresses, 200, 204

general, 189

press, radio and television, 200-1

Confinement leave, 78

Conscience, Freedom of.

approved schools, 172

Cowper-Temple clause, 130

Days of Obligation, 134-5

pupils, 127

special schools, 137

teachers, 61, 127

withdrawal from religious education, 127, 129-30,

132, 133-4, 136-7, 172

Consultative Committees, 23

- Contract. *see* Agreement
 Contributory negligence, 141
 Contributory service, 87
 Controlled schools
 correspondent or clerk, 37-8
 maintenance, 41
 managers and governors, 41
 religious education, 42, 132
 reserved teachers, 42, 58-9
 teachers, 42
 Copyright.
 broadcast material, 186
 Copyright Act (1956), 209-211
 gramophone records, 185-6
 infringement, 186-7
 music, 185
 private performances, 186
 school magazines, 209
 stage plays, 184-5
 Corporal punishment, 64, 157-158, 161-3
 Correspondent, 35, 37-8, 103
 Corruption in office, 59
 Council schools, 128
 County authorities *see* Authorities, Local education
 County colleges, 33, 117, 124-5
 County complements, 36
 County schools
 management, 39
 religious education, 129-31, 132-3
 Court proceedings
 see also Juvenile courts
 against teachers and authorities, 139, 157
 attendance (school), 121-3, (college), 124-5
 documents receivable in evidence, 99, 121, 125
 presumption of age, 117
 taking children abroad, 179
 Cowper-Temple clause, 130
 Crests, School, 208-9
 Criminal negligence, 148-9
 Dangerous performances, 114
 Day of Atonement, 134
 Days of Obligation *see* Obligation, Days of
 Death gratuity, 92
 Defamation, 189-94
 Defective premises and equipment, 61-3, 139, 152
 Degrees
 recognition for qualification, 47, 50
 recognition for salaries, 69-70
 Denominational instruction
 aided schools, 40, 131-2
 controlled schools, 42, 132
 forbidden in county schools, 39
 in church or elsewhere, 132
 inspection, 133
 special agreement schools, 43, 132
 withdrawal from, 132, 133-4
 Departmental headships, 72
 Dependants
 national insurance, 80-1
 pensions scheme, 93
 Dependants' allowances on salary, 69
 Deputy headships, 72
 Detention, 161
 Detention centres, 170
 Dinner duty, 174-5
 Diocesan Education Committees, 26-8
 Direct grant schools, 34
 Discipline, 177
 see also Punishment
 Dismissal of teachers, 40, 55, 58, 59, 63-5, 93
 Divisional administration, 25-6, 59-60
 Dual system, 128

Education Act (1870), 130
 Education Act (1902), (Balfour Act), 31
 Education (Administrative Provisions) Act (1907), 52
 Education Act (1921), (Fisher Act), 125, 175
 Education Act (1936), 113
 Education Act (1944) (Butler Act)
 § 1, 21, 22
 § 4, 23
 § 5, 22
 § 6, 24, 38
 § 7, 28, 129
 § 8, 24, 28, 29, 32
 § 15, 40, 41, 42
 § 17, 35, 37
 § 18, 39, 41
 § 19, 39, 40, 41
 § 20, 36
 § 22, 41, 42, 43, 44
 § 23, 40, 43
 § 24, 40, 58
 § 25, 129, 133, 134, 136
 § 26, 39, 129, 130
 § 27, 42, 58, 132
 § 28, 40, 132
 § 29, 130, 131
 § 30, 61
 § 31, 35
 § 35, 116
 § 36, 118
 § 37, 123
 § 38, 116
 § 39, 118, 119, 134
 § 40, 122
 § 41, 24
 §§ 43-46, 33
 § 44, 124
 § 49, 174-5
 § 59, 114
 §§ 70-75, 34
 § 76, 28, 29

Education Act (1944) (Butler Act) —*cont*
 § 77, 22, 24, 120
 § 88, 24
 § 89, 67
 § 95, 125
 §§ 102-105, 40
 § 104, 43
 § 114, 28, 29, 38, 101, 118
 § 120, 112
 schedule I, 25, 26
 schedule III, 42, 43
 schedule IV, 37
 schedule V, 130
 schedule VIII, 112
 Education Act (1946)
 §§ 3-4, 40
 § 8, 117
 § 10, 59, 60
 schedule I, 40
 Education (Miscellaneous Provisions) Act (1948)
 § 3, 28, 29
 § 4, 101, 118
 § 9, 117
 § 11, 37, 43, 112, 122
 schedule I, 37, 43, 112, 122
 Education (Miscellaneous Provisions) Act (1953)
 § 1, 43
 § 8, 40
 § 11, 122
 § 13, 61
 Education authorities *see*
 Authorities, Local education
 tion
 Education, Minister of *see*
 Minister of Education
 Education, Ministry of *see*
 Ministry of Education
Education of the Adolescent, The
 (Hadow Report), 23, 31
 Educational visits, 150, 176-7,
 180-1

- Educational year, 106
 Eleven-plus examination, 30-2
 Emoluments and income tax, 74-5
 Employer in voluntary schools, 40, 57, 62
 Employment of children, 112-115
 Entertainments duty, 188
 Entertainments, Employment of children in, 113-14, 121
 Equal pay, 69
 Errands for teachers, 142-3, 149-50
 Evening institutes, 33
 Evidence, Documents in, 99, 121, 125
 Examinations
 entry of pupils for external examinations, 109
 General Certificate of Education, 31, 32, 33
 secondary selection, 30-2
 Excepted districts, 25-6, 59-60
 Exclusion of pupils
 infectious illness, 104-5
 reinstatement after expulsion, 102, 104
 removal from roll, 102
 suspension and expulsion, 103-4, 164
 Expenses of teachers and income tax, 74-5
 Expulsion *see* Exclusion of pupils
 Extraneous duties
 accidents during, 77, 142-3, 145, 146-54
 bathing and boating, 178, 179-80
 dereliction of duty, 181-2
 dinner duty, 174-5
 games, 177-8
 playground, 176
 Extraneous duties —*cont*
 road crossing, 176
 school journeys, 179
 Family allowances, 69
 Fees, Doctors', 151
 Fire, Protection against, 148-9
 First aid, 151
 Fit person orders, 171-2, 173
 Floodlight, 29
 Foundation managers and governors
 aided schools, 39-40, 131-2
 controlled schools, 41
 special agreement schools, 43, 132
 Further education, 29, 33, 112, 124-5
 General and approved practice, 143-5, 152, 177-8
 General Certificate of Education, 31, 32, 33, 109
 Good Honours allowance, 69-70
 Government, Articles of, 35, 37-8
 Government, Instrument of, 35, 36-7
 Governors
 see also Foundation managers and governors
 aided schools, 39-40
 constitution, 36-7
 controlled schools, 41
 county schools, 39
 duties, 37-8
 special agreement schools, 43
 visits to schools, 202
 Graded posts, 72
 Graduates
 qualification, 47, 50
 salary allowances, 69-70
 Grammar schools, 31, 125-6, 135-6
 Grouping of schools, 36

- Hadow Report (*Education of the Adolescent*), 23, 31
 Handicapped children.
 see also Special schools
 categories, 109-110
 leaving age, 116
 Handicraft rooms, Dangers in, 146
 Heads of departments, 72
 Heads of schools
 general responsibility, 38, 108, 182
 power of suspension or expulsion, 103-4, 164
 right to attend managers' or governors' meetings, 38
 salaries, 71-2
 temporary, 72
 unattached, 54, 72-3
 unqualified, 45
 Holidays
 determination of, 38, 106
 employment of children during, 113
 leave for parents' holidays, 121
 occasional closures, 106
 Homework, 204-5
 In loco parentis, 15-16, 138-9, 152-4, 155, 179, 207
 Income tax, 74-5, 91
 Indemnity, Letters of, 180-1
 Independent schools, 34
 Infants' schools, 30
 Infectious illness
 pupils, 104-5
 teachers, 77
 Inspection
 by HMIs, 22-3
 by L.E.A. inspectors, 24
 entry in annals, 108
 Inspection — *cont*
 independent schools, 34
 registers, 120
 religious education, 131, 132-133
 Instruments of Management and Government, 35, 36-7
 Insurance
 personal injury, 62
 school journeys, 178-9
 teachers' personal property, 205
 travel, 180
 Invitees, 152
 Jewish observances, 134, 135
 Joint education boards, 24, 38
 Judges¹ cited.
 Ashworth, J., 60
 Atkin, L. J., 140-1
 Avory, J., 145
 Barry, J., 175
 Cave, J., 139
 Channell, J., 76
 Charles, J., 162
 Clouston, J., 64
 Cockburn, L. C. J., 158, 164, 192-3
 Collins, J., 159-60
 Devlin, J., 146-7
 Esher, M. R., 139
 Fawell, L. J., 143
 Field, J., 155
 Goddard, L. C. J., 60, 147-8, 208-9
 Hewart, L. J., 160
 Hilbery, J., 140, 153-4
 Hornidge, J., 181
 Lush, J., 145
 McCardie, J., 55
 McNaghten, J., 76
 McNair, J., 138-9

 ¹ J.—Judge
 L. J.—Lord Justice of Appeal
 L. C. J.—Lord Chief Justice
 M. R.—Master of the Rolls

Judges cited —*cont*

- Ormerod, J, 29
- Phillimore, J, 155, 157
- Sargent, J, 116-17
- Scrutton, L J, 144-5, 181
- Stable, J, 60
- Sumner, L J, 64
- Swift, J, 193
- Vaisey, J, 138
- Walton, J, 155
- Wightman, J, 194

Junior pupil, defined, 28

Junior schools, 30

Juvenile courts

- absolute discharges, 168
- adoption cases, 168
- approved schools, 172, 173
- attendance centres, 170
- attendance control, 122, 167
- Borstal treatment, 170-1
- care or protection cases, 167, 172-3
- child defined, 165, 166-7
- conditional discharges, 169
- constitution and procedure, 165-6
- detention centres, 170
- finer, 169-70
- fit person orders, 171-2, 173
- imprisonment, 171
- offences by juveniles, 166-7, 168-72
- probation orders, 169
- remand homes and centres, 171
- reports by local education authorities, 168
- supervision orders, 172
- young person defined, 165, 166-7

Lancaster, Joseph, 128

Leave of absence
see also Sick pay

Leave of absence —*cont*

- accidents, 61-3, 77-8
- conferences, 84
- confinement, 78
- days of obligation, 84, 134-5
- domestic reasons, 83
- further training, 84
- infectious illness, 77
- national service, 85
- public duties, 84
- pupils, 104-5, 121, 134-5
- sports meetings, 84
- superannuation, effect on, 89
- tuberculosis, 78

Leavers

- broken terms, 117
- premature, 125-6, 195
- removal from roll, 101-3
- school leaving age, 116-17

Label, 189-90, 190, 191

Licences

- employment of children in
 - entertainments, 113-14
 - music and dancing, 184
 - original plays, 187
- Performing Right Society, 185, 186
- Phonographic Performances, Ltd., 185-6
- stage plays, 183-4

Licensees, 152, 203

Local authorities, Membership
of, 59-61

Local education authorities, *see*
Authorities, Local educa-
tion

Log book, *see* School annals

'London Area' allowance, 70

Long service qualification, 49,
71

Lord's Prayer, 130

Lorries, Use of, 180

Lotteries, 206-7

Lump sum, 91

- Magazines, School, 209
 Maintenance contribution.
 aided schools, 41
 special agreement schools, 43
 Management, Instrument of,
 35, 36-7
 Management, Rules of, 35, 37-8
 Managers
 see also Foundation managers
 and governors
 aided schools, 39
 constitution, 36-7
 controlled schools, 41
 county schools, 39
 duties, 37-8
 special agreement schools, 43
 visits to schools, 202
 Manslaughter through excessive
 punishment, 158
 Married women, 58, 78, 82, 84
 Medical certificates, 77, 82, 89
 Medical examinations, 52, 55
 Medical fees, Liability for, 151
 Minister of Education, 21, 22,
 24-5, 35, 43, 67-8, 102, 104
 Ministers of religion.
 ineligibility as teachers, 135-6
 religious education in volun-
 tary schools, 130, 131-2
 visiting schools as speakers,
 130, 132, 136
 Ministry of Education.
 functions, 22-3
 pensions branch, 89
 requirements as to records,
 99-100
 Royal Society of Teachers, 53
 Minor authorities, 38-9
 Modern schools, 31
 Multilateral schools, 32
 National Insurance—*cont.*
 declaration as to entitlement,
 80-1
 deductions from sick pay, 79
 first appointments, 83
 superannuation, 90, 93
 National schools, 128
 National service, Leave for, 85
 National Society, 128
 Negligence:
 see also Accidents
 accidents away from school,
 149-50, 176-7
 commencement of proceed-
 ings, 150
 contributory, 141
 criminal, 148-9
 defects in premises and
 equipment, 61-3, 137, 152
 dereliction of duty, 148-9,
 181-2
 duty of care, 138-40, 142
 effect of age, 140, 145
 errands for teachers, 142-3,
 149-50
 general and approved prac-
 tice, 143-5, 177-8
 liability of master for servant,
 61-3
 nature of, 139-41
 property, care of pupils', 205
 science laboratories, etc., 146
 scope of employment, 142-3
 straying child, 147-8
 visitors, 152
 voluntary duties, 176-7
 warning of danger, 145-6, 152
 Non-teaching staff, Appoint-
 ment of, 41, 42, 43
 Notice of resignation, 57, 63
 Nursery schools, 30, 45
 Obligation, Days of, 84, 118-19,
 134-5

- Occasional closures, 106
 Occasional teachers
 eligibility of clergy and ministers, 135
 employment of, 45, 52
 salaries, 71
 Overseas service, 87-8
- Parent-teacher associations, 206
- Parents
 appeal against exclusion, 102, 104
 attendance at juvenile courts, 166
 breach of school rules, 159-161
 complaints, 16-17, 151-2, 156-9, 193-4, 203
 defined, 118
 duty to secure children's education, 118-19
 employment of children, 113
 onus to prove child's age, 117
 payment of child's fines, 169-170
 proceedings for school attendance, 121-3
 right to choose school, 28, 29, 104, 123
 right to visit school, 203
 withdrawal from religious education, 127, 129-30, 132, 133-4, 136-7, 172
- Passports, 179
- Pecuniary interest, 59
- Pension, 90-1
 see also Superannuation
- 'Pension quarter', 89
- Pensionable service, 86-8
- Pensions (Increase) Acts, 94-5
- Performing Right Society, 185, 186
- Phonographic Performances, Ltd, 185-6
- Physical education, Accidents during, 146-7, 150, 177-8
- Playground duty, 176
- Plays
 children as performers, 113-114
 entertainments duty, 188
 fire precautions, 183-4
 infringement of copyright, 186-7
 licensing of hall, 183-4
 original plays, 187
 private performances, 186
 royalties, 184-5
- Police
 investigations in school, 207
 removal of trespassers, 203
 requests for information, 200
- Prefects, Punishment by, 163
- Premature leavers, 125-6, 195
- Primary education, 28, 30
- Primary schools, 30, 35, 36-8
- Privilege, 192-4
- Probation of teachers, 49-50, 163
- Prohibition orders, 169
- Professional associations, 17, 147, 152, 193, 213-16
- Professional register, 52-3
- Promotion list, 54-5
- Property, Loss of, 205
- Public duties, Leave for, 84
- Publishers' representatives, 204
- Punishment
 book, 99, 109
 by prefects, 163
 canons of, 156
 corporal, 64, 157-8, 161-3
 criminal, 158
 detention, 161
 local education authority regulations, 156-8
 offences out of school, 158-61
 suspension and expulsion, 103-4, 164

Punishment —*cont*

- teacher's authority, 155-6
- unorthodox, 158, 163

Pupil

- junior, 28
- senior, 29

Qualification of teachers

- approval by Minister, 22, 46, 49, 65-6
- graduate qualifications, 47, 50
- health, 52, 55
- long service, 49, 71
- probation, 49-50, 163
- special cases, 48
- special qualifications, 47-8
- training courses, 46-7
- verification of qualifications, 49

Radio licencees, 207-8

Raffles, 206-7

Recognition of teachers *see*
Qualification of teachers

Recognized service, 86-7

Records of development, 105

Re employment after retirement, 89

References, 197-9

Registered pupil, defined, 101

Registers *see* Admission of
pupils, Attendance controlRegulations, Local education
authority, 25

Religious education

- agreed syllabuses, 130-1
- aided schools, 40, 131-2
- boarders, 136
- controlled schools, 42, 132
- county schools, 39, 130-1
- Days of Obligation, 84, 118-119, 134-5
- freedom of conscience, 127
- history, 128

Religious education —*cont*

- inspection, 132-3
- Jewish observances, 134, 135
- reserved teachers, 42, 43, 57, 58-9, 65, 132
- special agreement schools, 43, 132
- special schools, 137
- standing advisory councils, 131
- time table, 133
- U.S.A., 127
- visits of clergy and ministers, 130, 132, 136
- voluntary schools, 131-2
- withdrawal, 127, 129-30, 132, 133-4, 136-7
- worship, 129-30

Religious opinions of teachers

see also Reserved teachers

- Days of Obligation, 84, 118-119, 134-5
- freedom of conscience, 61, 127, 135-6

Religious services

see also Worship

- employment of children, 113
- performing rights, 185

Removal from roll, *see* Exclusion, Leavers

Reports

- juvenile court, 168
- references, 197-9
- school terminal, 199
- teachers, 199-200
- testimonials, 194-7

Reserved teachers

- agreements, 57
- controlled schools, 42
- dismissal, 65
- general provisions, 58-9, 132
- special agreement schools, 43

Residential emoluments and income tax, 74-5

- Residential requirement, 64
 Resignation of teachers, 55-6, 57, 63
 Robes, Academic, and tax allowances, 74
 Royal Society of Teachers, 52-3
 Royalties
 gramophone records, 185-6
 music, 185, 186
 private performances, 186
 stage plays, 184-5
 Rules of Management, 35, 37-8
 Rules, School, 159-60, 204-5, 205-6
 Sabbath, Jewish, 135
 Salaries
 aided schools, payment in, 40-1
 approved study, 69
 deputy heads, 72
 equal pay, 69
 experience before qualification, 71
 general structure, 68
 good honours addition, 69-70
 graduate addition, 69
 heads of schools, 71-2
 'London Area' allowance, 70
 long service qualification, 71
 negotiation, 67-8
 qualification after twenty-one, 71
 special schools, 73-4
 special training, 71
 supply teachers, 73
 suspension of teachers, 63
 temporary heads, 72
 tenure of allowances, 72
 unattached heads, 72-3
 unqualified teachers, 71
 School annals, 99, 100, 108-9, 130
 School attendance orders, 123-4
 School boards, 128
 School buildings, defined, 40
 School Journey Association of London, 179, 220-1
 School journeys, 150, 178-81
 School leaving age, 116-17
 Schoolkeeper, Appointment of, 41, 42, 43
 Science rooms, Dangers in, 146
 Scope of employment, 142-3, 149-50
 Second master or mistress, 72
 Secondary education, 28, 30-2, 34, 125-6
Secondary Education (Spens Report), 23
 Secondary modern schools, 31
 Secondary selection, 30-2
 Senior pupil, defined, 29
 Service book, 22
 Services in church, 129-30
 Sessions, School
 ordinary schools, 106-7
 special schools, 111
 Sick pay
 see also Leave of absence
 deductions from, 79
 eligibility, 77-8
 holidays, 78-9, 80
 regulations, 76-7
 suspension of benefit, 79
 Sickness, defined, 76
 Slander, 189-90
 Smoking by pupils, 160
 Special agreement schools
 correspondent or clerk, 38
 maintenance, 43
 managers and governors, 43
 religious education, 43, 129-130, 132
 reserved teachers, 43, 58-9
 teachers, 43
 types of agreement, 42-3
 Special allowances, 69, 72

special schools

see also Handicapped children
categories of handicapped

children, 109-10

classes, size of, 111

further education, 112

hospital schools, 112

provision, 33

religious education, 137

removal from roll, 103

school leaving age, 116

sessions, 111

staffing, 50-1

terms, 111

Spens Report (*Secondary Education*), 23

Sports meetings, Leave for,
84-5

Staffing

ineligibility of clergy and
ministers, 135-6

ordinary schools, 45-6

special schools, 50-1

Stages of education, 28

Standing Advisory Councils on
Religious Education, 131

Statutes cited.

Act of Uniformity (1552)
(5 & 6 Edw VI, c. 1), 134

Adoption Acts (1926-50), 168

Children Act (1948), 61

Children and Young Persons
Act (1933), 112-15, 121,
122, 149, 156, 166

Copyright Act (1911), 209

Copyright Act (1956), 186,
209-11

Defamation Act (1952), 190,
191

Diocesan Education Com-
mittees Measure (1943),
26-8

Diocesan Education Com-
mittees Measure 1943

Statutes cited —*cont.*

(Amendment) Measure
(1951), 27

Education Acts (1870-1953),

see Education Act (1870),

Education Act (1902),

Education (Administrative

Provisions) Act (1907),

Education Act (1921), Edu-

cation Act (1936), Educa-

tion Act (1944), Education

Act (1946), Education

(Miscellaneous Provisions)

Act (1948), Education

(Miscellaneous Provisions)

Act (1953)

Elementary School Teachers

(Superannuation) Act

(1898), 90, 92-3

Family Allowances Acts

(1945-52), 69

Finance Act (1957), 188

Interpretation Act (1889), 17

Judicial Proceedings (Regula-
tion of Reports) Act (1926),
192

Law Reform Act (1935), 139

Limitation Act (1939), 150

Local Government Act
(1933), 59

Local Government Super-
annuation Act (1937), 87

London Government Act
(1939), 61

Mental Deficiency Act
(1913), 87

National Insurance Act
(1946), 79

National Insurance (Indus-
trial Injuries) Act (1946),
77, 79

Pensions (Increase) Acts
(1944-56), 94-5

Police Act (1946), 70

Statutes cited —*cont*

- Prevention of Cruelty to Children Act (1904), 156
- Prison Act (1952), 170
- Public Authorities Protection Act (1893), 150
- Public Libraries (Amendment) Act (1893), 60
- School Crossing Patrols Act (1953), 176
- Servants Characters Act (1792), 55, 197
- Teachers (Superannuation) Acts (1925-56), 57, 86-95, 175
- Theatres Act (1843), 187
- Workmen's Compensation Acts, 77
- Street accidents, 147-50
- Street trading, 114
- Student Christian Movement in Schools, 136
- Superannuation
 - additional allowance (lump sum), 91
 - allocation of part of allowances, 91
 - annual allowance (pension), 90-1
 - annuities, 92-3
 - application for allowances, 89
 - breakdown allowance, 91-2
 - contributions, 86
 - death gratuity, 92
 - dependants' schemes, 93
 - dismissal, effect of, 93
 - lump sum (additional allowance), 91
 - national insurance, 93
 - overseas service, 87-8
 - pension (annual allowance), 90-1
 - pensionable service, 86-7

Superannuation —*cont*

- Pensions (Increase) Acts (1944-56), 94-5
 - qualification for allowances, 89-90
 - re-employment after retirement, 89
 - return of contributions, 93
 - service of exceptional value, 88
 - sick leave, effect of, 89
 - supplementary service, 87
 - war service, 88
- Supervision orders, 172
- Supplementary teachers, 45, 87
- Supply teachers, 73
- Suspension of pupils *see* Exclusion of pupils
- Suspension of teachers, 63
- Teachers Registration Council, 52-3
- Technical education, 30, 31, 33
- Temporary heads, 72
- Temporary teachers, 45, 51-2, 71
- Ten Commandments, 130
- Tenure, *see* Agreement, Teacher's, Appointment of teachers, Dismissal of teachers, Resignation of teachers, Salaries—tenure of allowances, Suspension of teachers
- Terms, School
 - ordinary schools, 106
 - special schools, 111
- Testimonials, 55, 194-7
- Third party, Injury by, 77-8
- Time tables, 107, 129, 132, 133
- Training of teachers, 24, 46-7, 69, 84
- Transfer of pupils, 106
- Transport, Provision of, 119

- Trespassers, 152, 203-4
- Truancy, *see* Attendance control
- Tuberculosis, 78
- Tuck shops, 208
- Unattached heads, 54, 72-3
- Unattached teachers, 54
- Uniform, 205-6
- Unqualified teachers, *see* Occasional teachers, Temporary teachers
- Unreorganized schools, 32, 55
- Visitors to schools
 accidents, 152
 classes, 152
 clergy and ministers as speakers, 130, 132, 136
 commercial travellers, 204
 inspectors, 23, 24, 34, 108, 120, 131, 132-3
 official, 202-3
- Visitors to schools —*cont*
 publishers' representatives, 204
- Voluntary duties, 63, 174
 see also Extraneous duties
- Voluntary schools, *see* Aided schools, Controlled schools, Special agreement schools
- Walking distance, defined, 119
- War service and pension rights, 88
- Waterways, Law of, 179-80
- Withdrawal, 127, 129-30, 132, 133-5, 136-7
- Worship
 aided schools, 40
 controlled schools, 42
 country schools, 39
 general provisions, 129-30
 special agreement schools, 43
- Year, Educational, 106